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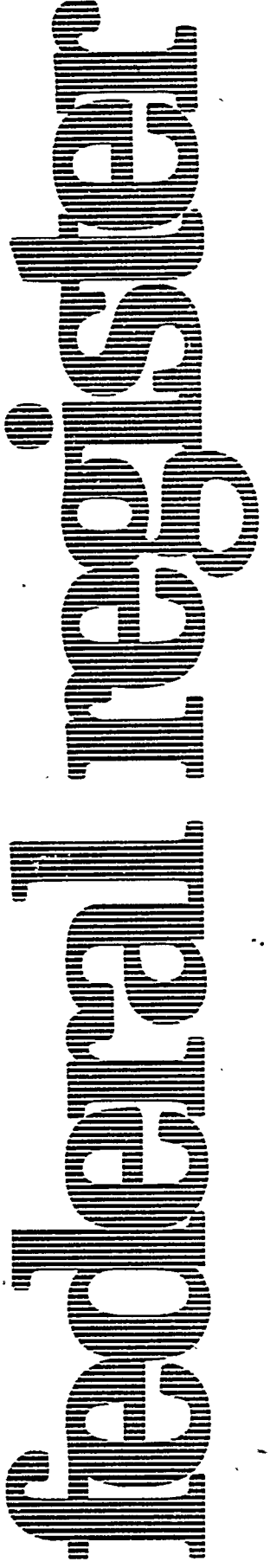

Monday
October 15, 1979

Highlights

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Highlights

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Rules and Regulations

Federal Register
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Monday, October 15, 1979

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 3]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Fruits: Import Regulations, Grade and Size Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes minimum grade and size requirements for Florida oranges, grapefruit, tangerines, and tangelos and imported grapefruit. The action is necessary to assure shipment of ample supplies of fruit of acceptable grade and size in the interests of growers and consumers.

EFFECTIVE DATES: Orange, Grapefruit, Tangerine, and Tangelo Regulation 3 to be effective October 15, 1979–October 12, 1980. Grapefruit Regulation 3 to be effective October 22, 1979–October 12, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha (202) 447–5975.

SUPPLEMENTARY INFORMATION: Notice was published in the September 21, 1979, issue of the Federal Register (44 FR 54717), that the Department was considering establishment of minimum grade and size regulations, to be effective under the marketing agreement, and Order No. 905, both as amended (7 CFR Part 905). This marketing agreement and order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). A conforming regulation for imported grapefruit, effective under section 8e of the act, was also being considered. The notice provided that all written comments be submitted by October 9, 1979. None were received.

The minimum grade and size requirements, herein specified, for domestic and export shipments reflect the Department's appraisal of the need for regulation of the designated varieties of Florida oranges, grapefruit, tangerines, and tangelos during the specified period based on the available supply and current and prospective market demand conditions. Such requirements are necessary to establish and maintain orderly marketing, and such action is consistent with the objectives of the act and the interests of producers and consumers.

The regulations are based upon recommendations of the Citrus Administrative Committee established under the marketing order. The committee estimates the 1979–80 season's crop of Florida round oranges at about 180 million boxes, 10 percent over last season's production. It estimates grapefruit production at about 48 million boxes, slightly lower than the 1978-79 season production, and that the Temple orange, tangelo, and tangerine crops are comparable in size to those harvested last season. The committee reports that there was a heavy prolonged bloom which peaked about the last week of March. Groves are generally in good condition and the new crop should be of good quality as a result of adequate to excessive moisture during the summer. The shape of the fruit is considered to be fair to good and the absence of late bloom should enhance the overall quality of the citrus crop. The committee's appraisal indicates fresh market demand at 19,000 carlots of round oranges, 3,750 carlots of Temple oranges, 50 carlots of seeded grapefruit, 35,000 carlots of seedless grapefruit, 4,500 carlots of tangelos, and 5,700 carlots of tangerines. Hence, considering the available supply and the reported size and quality of the fruit, more than ample quantities of each of the specified fruits meeting the minimum grade and size requirements will be available to supply such demands.

The minimum grade and size requirements for imported grapefruit would be consistent with section 8e of the act. This section requires that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

After consideration of all matters presented, including the proposals in the aforesaid notice and other available information, it is found that the regulation, as set forth herein, is in accordance with said marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of these regulations until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning the regulations, with an effective date of October 15, 1979, was published in the Federal Register, and no objection to the regulations or such effective date was received; (2) the recommendation for regulation was developed at an open meeting at which interested persons were afforded an opportunity to submit their views; and (3) the regulations will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time.

Accordingly, it is found that the provisions of the proposed regulations contained in the Notice of Proposed Rulemaking published in the Federal Register on September 21, 1979 (44 FR 54717), shall be and are the terms and provisions of these regulations, and are set forth in full herein.

This regulation has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant." An impact analysis is available from Malvin E. McGaha (202) 447–5975.

Accordingly, it is found that requirements for Florida oranges, grapefruit, tangerines, and tangelos and imported grapefruit are as follows:

§ 905.303 Orange, Grapefruit, Tangerine, and Tangelo Regulation 3.

Order. (a) During the period specified in Column (2) of Table I no handler shall ship between the production area and any point outside thereof in continental United States, Canada, or Mexico, any variety of fruit listed in Column (1) of such table unless such variety meets the

applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section) specified for such variety in Columns (3) and (4) of such table.

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges:			
Early and Midseason	10/15/79-10/12/80	U.S. No. 1	2 9/16
Naval	10/15/79-10/12/80	U.S. No. 1 Golden	2 9/16
Valencia and Other Late Type	10/15/79-10/12/80	U.S. No. 1	2 9/16
Temple	10/15/79-10/12/80	U.S. No. 1	2 9/16
Grapefruit:			
Seeded, except pink	10/15/79-10/12/80	U.S. No. 1	3 13/16
Seeded, pink	10/15/79-10/12/80	U.S. No. 1	3 13/16
Seedless, except pink	10/15/79-10/12/80	Improved No. 2	3 9/16
Seedless, pink	10/15/79-10/12/80	Improved No. 2	3 9/16
Tangerines:			
Robinson	10/15/79-10/12/80	U.S. No. 1	2 9/16
Dancy	10/15/79-10/12/80	U.S. No. 1	2 9/16
Honey	10/15/79-10/12/80	Florida No. 1	2 11/16
Tangelos: Tangelos	10/15/79-10/12/80	U.S. No. 1	2 9/16

(b) During the period specified in Column (2) of Table II no handler shall ship to any destination outside the continental United States, other than Canada or Mexico, any variety of fruit listed in Column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section) specified for such variety in Columns (3) and (4) of such table.

Table II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges:			
Early and Midseason	10/15/79-10/12/80	U.S. No. 1	2 9/16
Naval	10/15/79-10/12/80	U.S. No. 1 Golden	2 9/16
Valencia and Other Late Type	10/15/79-10/12/80	U.S. No. 1	2 9/16
Temple	10/15/79-10/12/80	U.S. No. 1	2 9/16
Grapefruit:			
Seeded, except pink	10/15/79-10/12/80	U.S. No. 1	3 9/16
Seeded, pink	10/15/79-10/12/80	U.S. No. 1	3 9/16
Seedless, except pink	10/15/79-10/12/80	Improved No. 2	3 9/16
Seedless, pink	10/15/79-10/12/80	Improved No. 2	3 9/16
Tangerines:			
Robinson	10/15/79-10/12/80	U.S. No. 1	2 9/16
Dancy	10/15/79-10/12/80	U.S. No. 1	2 9/16
Honey	10/15/79-10/12/80	Florida No. 1	2 9/16
Tangelos: Tangelos	10/15/79-10/12/80	U.S. No. 1	2 9/16

(c) Size Tolerances: In the determination of minimum size as prescribed in Tables I and II, the following tolerances are permitted (1) for *oranges,* as set forth in § 2851.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos, except that such tolerances for other than Navel and Temple Oranges shall be based only on the oranges in the lot measuring 2 4/16 inches or smaller in diameter, and the tolerance for Honey tangerines shall be as specified in § 2851.1818 of the U.S. Standards for Grades of Florida Tangerines; (2) for *grapefruit,* as specified in § 2851.761 of the U.S. Standards for Grades of Florida Grapefruit; (3) for *tangerines,* as specified in § 2851.1818 of the U.S. Standards for Grades of Florida Tangerines; and (4) for *tangelos,* as set forth in § 2851.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos.

(d) Terms used in the marketing order, including Improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in Rule No. 20-35.03 of the Regulations of the Florida Department of Citrus, and terms relating to grade, except improved No. 2 grade for grapefruit, and diameter shall mean the same as is given to the terms in the U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 2851.1140-2851.1180), the U.S. Standards for Florida Tangerines (7 CFR 2851.1810-2851.1835), or the U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750-2851.784).

§ 944.103 Grapefruit Regulation 3.

(a) *Applicability to imports.* Pursuant to Section 8e of the act and Part 944—Fruits; Import Regulations, during the period October 22, 1979, through October 12, 1980, the importation into the United States of any variety of grapefruit listed in Column (1) of said table is prohibited unless such variety meets the applicable minimum grade and size specified for such variety in Columns (3) and (4) of said table. In the determination of minimum size as prescribed in Table I, a tolerance is permitted as specified in paragraph (c) of § 905.303.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) Notwithstanding any other provisions of this regulation, any importation of grapefruit which, in the aggregate, does not exceed ten standard packed cartons, equivalent to four-fifths (4/5) of a United States bushel of grapefruit, each, or equivalent quantity, may be imported without regard to the requirements specified herein.

(d) It is determined that imports of grapefruit, during the effective time of this regulation, are in most direct competition with grapefruit grown in the State of Florida. The requirements of

this section are the same as those being made effective for grapefruit grown in Florida.

Dated: October 11, 1979.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-31930 Filed 10-12-79; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 966

Tomatoes Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of tomatoes grown in certain counties in Florida to be inspected and meet minimum grade, size, pack, container and marking requirements. This will promote orderly marketing of such tomatoes and keep less desirable sizes and qualities from being shipped to consumers.

EFFECTIVE DATE: October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Peter G. Chapogas (202) 447-5432.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

During the period October 15 through November 30, 1979, this regulation, designed to provide orderly marketing of Florida tomatoes, imposes a minimum grade of U.S. No. 3, a minimum size of 2 3/32 inches in diameter and requires inspection of fresh shipments. The establishment of such requirements under Marketing Order No. 966 is necessary to keep undesirable tomatoes from being shipped to consumers.

Findings: (1) Pursuant to Order No. 966, as amended (7 CFR Part 966), regulating the handling of tomatoes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon other available information, it is hereby found that the handling regulations, hereinafter set forth, will tend to effectuate the declared policy of the act.

(2) The regulation imposes minimum grade, size, pack, container and marking requirements on the handling of tomatoes. The regulation is based upon an appraisal of the crop and prospective market conditions as required in § 966.50 of the order. This regulation is necessary to prevent the handling of any tomatoes of lower grades or smaller sizes than those specified in the regulation, and to provide the trade and consumers with tomatoes of acceptable quality pursuant to the declared policy of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the Federal Register (5 U.S.C. 553) because shipments of tomatoes from the production area are expected to begin on or about the effective date hereof. The recommendation and supporting information for regulation were submitted to the Department after an open meeting of the Florida Tomato Committee; said meeting was held to consider recommendations for regulation, after giving due notice of the meeting, and interested persons were afforded an opportunity to submit their views at this meeting; and handlers registered under the order as required in § 966.113 have been informed of the proposal. It is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period hereinafter set forth so as to provide for the regulation of the handling of such tomatoes, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective date of the regulation.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Peter G. Chapogas (202) 447-5432.

7 CFR Part 966 is amended by adding a new § 966.318 as follows:

§ 966.318 Handling regulation.

During the period October 15, 1979, through November 30, 1979, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) *Grade, size, container and inspection requirements.*

(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2 or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least 2 3/32 inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in Paragraph 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
7x7	2 9/32	2 25/32
6x7	2 7/32	2 13/32
6x6	2 11/32	2 29/32
5x6 and larger	2 21/32	

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2 13/32 inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lgr. or 5x6 & Lgr.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receive's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) which are resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least 2$^{23}/_{32}$ inches in diameter and (iii) the container weight requirements of paragraph (a)(3).

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and Section 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$^{23}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: October 11, 1979 to become effective October 15, 1979.

Charles R. Brader,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-31929 Filed 10-12-79; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1822, 1901, and 1944

Amendment, Consolidation and Redesignation

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations pertaining to Farm Labor Housing Loans and Grants. The intended effect of this action is to combine the loan and the grant regulations into one Subpart, expand the eligibility requirements for labor housing loans to family partnerships and corporations, provide nationwide program clarity and consistency, incorporate provisions of the Housing and Community Development Act of 1978, and simplify program regulations. This action is being taken in response to user needs and the Presidential Executive Order regarding simplification of regulations.

EFFECTIVE DATE: October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Thomas Gerlitz (202) 447–7207.

SUPPLEMENTARY INFORMATION: FmHA amends, consolidates, and redesignates Subparts C and E of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations into a new Subpart D of Part 1944, Chapter XVIII, Title 7, Code of Federal Regulations. Subparts C and E of Part 1822 are deleted. Various sections of Part 1901 are amended to change cross references.

On May 9, 1979 FmHA published a notice of proposed rulemaking in the Federal Register (44 FR 27130) regarding revising, consolidating, and redesignating the Farm Labor Housing Loan and Grant Program regulations.

FmHA received 5 responses to the May 9, 1979 publication as of July 9, 1979. These responses were serious considered and those which suggested changes to provide greater clarity and to remove conflicting statements and/or definitions have been incorporated into the final regulations.

The responses raised the following basic concerns:

1. Housing for seasonal farmworkers needs to be more accurately defined and adequate provisions for its inclusion need to be made.

FmHA has included provisions to provide for seasonal farmworker housing and expects this type of housing to play an increasing role in the Labor Housing programs.

2. Additional clarification and support of equal opportunity for minorities and women within the Labor Housing program is needed. FmHA has included additional requirements and notifications of recipients responsibility to comply with provisions of the civil rights act as amended.

3. The location requirements for Farm Labor housing need to be clarified.

FmHA has consolidated and clarified the location requirements for Labor Housing Projects.

Accordingly various sections of Parts 1822 and 1901 are amended and Subpart D of Part 1944 is added as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subparts C and E are Deleted.

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart D—Davis-Bacon Act *C*

§ 1901.152 [Amended]

1. In § 1901.152 (a)(1) change "Subpart E of Part 1822 of this Chapter (FmHA Instruction 444.6)" to "Subpart D of Part 1944 of this Chapter".

Subpart O—Jointly Funded Grant Assistance to State and Local Governments and Nonprofit Organizations

§ 1901.702 [Amended]

2. In § 1901.702 change "Subpart E of Part 1822 of this Chapter (FmHA Instructions 442.12, 442.13 or 444.6)" To "Subpart D of Part 1944 of this Chapter (FmHA Instructions 442.12, 442.13 or 1944–D)".

§ 1901.707 [Amended]

3. § 1901.707 (c) change "Part 1822 Subpart E of this Chapter (FmHA Instruction 444.6)" to "Subpart D of Part 1944 of this Chapter".

§ 1901.708 [Amended]

4. In § 1901.708 (c) change "Part 1822 Subpart E (FmHA Instruction 444.6)" to "Subpart D of Part 1944 of this Chapter".

§ 1901.719 [Amended]

5. In § 1901.719 (c) change "Part 1822 Subpart E (FmHA Instruction 442.12, 442.13 or 444.6)" to "Subpart D of Part 1944 of this Chapter (FmHA Instructions 442.12, 442.13 or 1944–D)".

Exhibit B [Amended].

6. In Exhibit B, paragraph 2, change "Part 1822 Subpart E (FmHA Instructions 442.12, 442.13 or 444.6)" to "Subpart D of Part 1944 of this Chapter (FmHA Instructions 442.12, 442.13, or 1944–D)".

7. Subpart D of Part 1944 is added and reads as follows:

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

Sec.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.151 Purpose.

This Subpart sets forth the policies and procedures and delegates authority for making initial and subsequent insured loans under Section 514 and grants under Section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor.

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing and related facilities for domestic farm labor to be located in areas where a need exists and in making LH grants when there is a pressing need for such facilities in the area and there is reasonable doubt that the housing can be provided without the grant assistance.

§ 1944.153 Definitions.

As used in this Subpart:

(a) *Domestic farm laborer.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons. Domestic Farm laborers may include those laborers engaged in:

(1) the primary production of agricultural commodities on a farm, or

(2) the handling of agricultural commodities in the unprocessed stage on or near the farm as long as the employer of the laborer is the farmer who produced the commodity being handled.

Domestic Farm labor also includes persons working in aquaculture operations as defined in Subpart B of Part 1945 of this Chapter. Retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or becoming disabled may continue to occupy a project that they initially occupied as an eligible domestic farm laborer.

(b) *Housing.* New or existing structures which are or will be suitable for decent, safe, and sanitary dwelling use by domestic farm labor. "Housing" may include household furnishings and related facilities where appropriate.

(c) *Household furnishings.* Such basic durable items as stoves, refrigerators, tables, chairs, dressers, and beds. Items

such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

(d) *Related facilities.* Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

(e) *Farmowner.* A natural person or persons who are the "owners" of a "farm" as these two terms are further defined in Subpart A of Part 1822 (FmHA Instruction 444.1).

(f) *Family farm corporation or partnership.* A private corporation or partnership in which at least 90% of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership shall not be eligible for assistance. The family farm corporation or partnership must be (1) legally organized and authorized to own and operate a farm business within the State, (2) legally able to carry out the purposes of the loan, and (3) prohibited from the sale or transfer of 90% of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

(g) *Organization.* An association of farmers, a broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or political subdivision of State or local government.

(h) *Association of farmers.* Two or more farmers (farmowners or leaseholders) acting as a single legal entity whose members are individuals devoting a substantial part of their time to personal participation in the conduct of farming operations, and the majority of whose members reside in the area where the housing will be located. Members may include the individual members of farming partnerships or corporations provided such individuals are actually involved in the day-to-day onsite farming operations.

(i) *Broad-based nonprofit organization.* An organization, public or private, which (1) is incorporated within the State, Puerto, Rico, Virgin Islands, or a Federally recognized Indian Tribe, (2) is organized and operated on a nonprofit basis, and (3) is legally precluded from distributing any profits or dividends to its members, (4) is not grower oriented (majority of board must be nonfarmers) (5) pledges to administer the housing as a community service in the interest of the whole community, and (6) has at least 25 members for projects with a total development cost of up to $100,000 and additional members for projects costing more than $100,000. The membership must reflect a variety of interests of the area where the housing will be located. Organizations operating in more than one local area will have local representation within its membership from each area where it's housing projects are located.

(j) *Nonprofit organization of farmworkers.* A nonprofit organization which is incorporated within the State, Puerto Rico, or the Virgin Islands, has local representation in the membership, and whose membership is composed of at least 51% farmworkers.

(k) *Construct or repair.* To construct new structures or facilities or to acquire, relocate, or repair or improve existing structures or facilities.

(l) *Members and membership.* Includes stockholders and stock when appropriate.

(m) *Board and directors.* Includes the governing body and members of the governing body of an organization.

(n) *Promissory note.* May include a bond or other evidence of indebtedness.

(o) *Mortgage.* May include any appropriate form of security instrument.

(p) *Development cost.* Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and an association of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

(q) *Individual.* A natural person. It may include the spouse.

(r) *Applicant.* The applicant for or the recipient of an LH loan or grant.

(s) *LH fund(s).* May include either loan or grant monies or both in this Subpart.

(t) *Subsequent LH loan or grant.* A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

(u) *Migrant.* A domestic farmworker who works in any given local area on a seasonal basis and relocates his or her place of residence as farmwork is obtained during the year.

§§ 1944.154—1944.156 [Reserved]

§1944.157 Eligibility requirements.

(a) *Eligibility of applicant for an LH loan.* To be eligible for an LH loan the applicant must:

(1) Be an individual farmowner, family farm corporation or family farm partnership whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis.

(2) Except for a State and local public agencies, or a political subdivision thereof be unable to provide the necessary housing from their own resources and be unable to obtain the necessary credit from any other source upon terms and conditions they could reasonably be expected to fulfill. If an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit, that would enable them to provide housing for farm workers at rental rates they can afford to pay.

The State Director may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association be unable to obtain the necessary credit elsewhere when *all* of the following conditions exist:

(i) There is a need in the area for housing for domestic farmworkers *who are migrants* and the applicant will provide such housing.

(ii) There are no qualified State or political subdivisions, public or private nonprofit organizations currently available or likely to become available within a reasonable period of time that are willing and able to provide the housing.

(iii) The interest rate for such loans will be in accordance with § 1810.1 of Subpart A Part 1810 (FmHA Instruction 440.1).

(3) Have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, moveable furnishings and equipment, printing lease forms, and

other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof, may include up to 2 percent of the development cost for initial operating expenses.

(4) After the loan is made, have income sufficient to pay operating expenses, make necessary capital replacements, make the payments on the loan and other authorized debts, and accumulate reasonable reserves as required.

(5) Possess the legal and actual capacity, character, ability, and experience to carry out the undertakings and obligations required for the loan, including the obligation to maintain and operate the housing and related facilities for the purpose for which the loan is made. Organizations operating in more than one local area will be required to indicate their ability to provide local management and supervision of the day-to-day operation of the housing project.

(6) An individual farmowner, family farm corporation or partnership, or an association of farmers, must intend to use the housing for labor to be used in the farming operations of the applicant, or farming operations of its members.

(7) Own the housing and related land or become the owner when the loan is closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include a lessee of land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the LH loan against the property will not exceed the maximum security value determined in accordance with Subparts A and B of Part 1809 of this Chapter (FmHA Instructions 422.2 or 422.3) as appropriate.

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate charged for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the LH mortgage or to transfer the lease.

(B) Permit FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the LH loan, to transfer the leasehold, subject to the LH mortgage, to a transferee with assumption of the LH debt and grant obligation.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(8) If it is a private broad-based nonprofit organization or a nonprofit organization of farmworkers, meet the following additional requirements:

(i) Be legally precluded from distributing any dividends or net earnings to its members or any private individual during its corporate lifetime.

(ii) In the event of its dissolution, be legally bound to transfer its net assets to a nonprofit organization of a similar type or a public body for use for domestic farm labor housing or other public purposes if the need for farm labor housing no longer exists.

(iii) Responsibility for management of the housing must be vested in the applicant's board of directors.

(A) A broad-based nonprofit organization must be governed by a board of directors of not less than five members who are experienced in such fields as real estate management, finance, or related businesses and who will not be users of the farmworkers housed in the project.

(B) A nonprofit organization of farmworkers must have representation on the board from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board.

(iv) Be prohibited from requiring or preventing employment on any particular farm or farms as a condition of occupancy.

(v) Except for an organization of farmworkers, be certified as exempt from Federal income taxation.

(9) Individual farmowner applicants who are citizens of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, or the trust territory of the Pacific Islands or residents in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole. If the applicant is an organization, other than a State or political subdivision, the majority of the members and controlling interests must be individuals who meet the citizenship requirements for individual farmowners as stated above.

(b) *Eligibility of applicant for an LH grant.* To be eligible for an LH grant the applicant must meet the applicable requirements in § 1944.157 (a) and:

(1) Be an organization, as defined in § 1944.153 (g) other than an association of farmers, with an assured life over a period of years sufficient to carry out the purpose of providing low-rent housing for domestic farm labor. This should not be less than the anticipated useful life of the project as suitable housing for domestic farm labor, assuming proper maintenance and repair of the property. Ordinarily, this should not be less than 50 years.

(2) When the grant is closed, be the owner (as defined in this Subpart) of the housing and related facilities, including the site.

(3) Be unable to provide the necessary housing from its own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit through an LH loan or from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(4) Possess the legal and actual capacity, ability, and experience to incu and carry out the undertakings and obligations required, including the obligations to maintain and operate the housing and related facilities for the purpose for which the grant is made.

(5) Legally obligate itself not to divert income from the housing to any other business, enterprise, or purpose.

(c) *Authorized representative of applicant.* FmHA will deal only with the applicant or its bona fide representative and technical advisers. The authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, management contracts, the purchase of equipment, or the purchase of land for the housing site

§ 1944.158 Loan and grant purposes.

LH loans and grants may be made to qualified applicants to:

(a) Build, buy, improve or repair housing as defined in § 1944.153(b).

(b) Purchase and improve the necessary land on which the housing will be located.

(1) The cost of land purchased with loan or grant funds may not exceed its present market value in its present condition. Present market value will be determined by a current appraisal in accordance with applicable FmHA regulations.

(2) Loan or grant funds will not be used to buy land from a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest, without prior approval of the State Director. In granting this approval the State Director should be sure that the purchase price does not exceed the present market value.

(3) Loan or grant funds may not be used to acquire land in excess of that needed for the housing, including related facilities, except when the applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the excess land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(c) Develop and install water supply, sewage disposal, streets, heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured adequate right to use of the facility for at least the life of the loan or grant and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the LH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application as extra payments on the LH loan of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(d) Construct other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services.

(4) Small infirmary for emergency care only when justified.

(5) Laundry room and equipment if not provided in the individual units.

(6) Appropriate recreational facilities and other facilities to meet essential needs.

(7) Child day care facilities when needed and feasible.

(e) Construct office and living quarters for the resident manager and other operating personnel if needed and advantageous to the project and the Government.

(f) Construct maintenance equipment or similar structures.

(g) Purchase and install ranges, refrigerators, clothes washers, and clothes dryers. If individual washer and dryer hookups are provided, clothes washers and clothes dryers may be installed in individual rental units only if the inclusion of such items in individual units is needed and is customary in the area for the type of housing involved and consistent with the requirement that the construction be undertaken in an economical manner and not constitute elaborate or extravagant items. Otherwise, the clothes washers and clothes dryers must be installed in a central laundry room. The number of washers and dryers must be adequate to serve the tenant needs. Whenever practical, this equipment should be attached to the real property in a manner to prevent easy removal.

(h) Purchase and install essential equipment which upon installation becomes a part of the real estate.

(i) Provide landscaping, foundation planting, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(j) Pay related costs such as fees and charges for legal, architectural, engineering, and other appropriate technical and required services. Ordinarily, FmHA will furnish the needed guidance for the development of an LH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan or grant without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan or grant, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(k) Pay interest which will accrue during the estimated construction period.

(l) Pay normal charges necessary to obtain interim financing.

(m) Pay initial operating expenses up to 2 percent of the development cost for any type applicant except an individual farmowner, family farm corporation, or partnership, or an association of farmers.

§ 1944.159 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for payment in installments within a period, not to exceed 33 years, as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Interest rate.* LH loans will be made at interest rates specified in FmHA Instruction 440.1, Exhibit B which is available to any FmHA office.

§§ 1944.160–1944.162 [Reserved]

§ 1944.163 Conditions under which an LH grant may be made.

A grant may be made to an eligible applicant only when all of the following requirements can be met:

(a) The applicant will contribute at least one-tenth of the total development cost, obtained from its own resources, including any power to levy taxes, assessments, or charges, with funds from other sources, or with an LH loan. The applicant's contribution must be available at the time of grant closing. If an LH loan is needed, the applicant will file an application for a combination loan and grant at the same time.

(b) The housing and related facilities will fulfill a pressing need in the area in which the housing is or will be located and there is reasonable doubt that such housing can be provided without the grant.

(1) The applicant will furnish FmHA factual evidence of fulfilling a pressing need. This need will be documented in accordance with Exhibit A–1 of this Subpart.

(2) When appropriate, the District Director may check with sources such as the State Department of Labor, Bureau of Employment Security, and other reliable sources to verify the information submitted.

(3) If, after evaluating the information furnished by the applicant and additional information that may be provided, the District Director determines that the housing will fulfill a pressing need and that a reasonable

doubt exists that the housing can be provided without the grant, the District Director will prepare a narrative statement to support these conclusions.

(c) The housing will be constructed in accordance with Exhibit A-3 of this Subpart.

(d) The housing will be constructed in an economical manner and will not be of elaborate or extravagant design or material.

(e) The housing must be durable and suitable for year-round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed.

§ 1944.164 Limitations and conditions.

(a) *Limitations on use of loan and grant funds.* Among the purposes for which loan and grant funds will *not* be used are the following:

(1) Providing housing for the members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation, partnership or an association of farmers.

(2) Housing, related facilities or household furnishings which are elaborate or extravagant in design or material.

(3) Refinancing debts of the applicant.

(4) Moveable-type furnishings or equipment except household furnishings as defined in § 1944.153(c).

(5) Payment of any fees, charges, or commissions to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of the loan.

(6) Payment of any fee, salary, commission, profit, or compensation to an applicant, or any officer, director, trustee, stockholder, member, or agent of the applicant, except as provided in § 1944.158(j).

(b) *Priority in use of grant funds and maximum amount of grant.*

(1) *Priority in use of grant funds.* Projects will be authorized for funding by the National and State Offices based on priority to:

(i) Locations where a long range and pressing need exists for farm labor housing because of labor intensive agricultural crop production and a lack of suitable housing.

(ii) Projects where occupants will derive the highest portion of their income from on farm agricultural work.

(2) *Maximum amount of grant.* The amount of any grant may not exceed the lessor of:

(i) Ninety percent of the total development cost, or

(ii) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will probably be able to repay, with interest, from income from rentals within the financial reach of low-income farmworker families. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farm workers will pay.

(c) *Advance of grant funds.* The times for requesting Treasury Checks representing LH grant funds and depositing such checks in the applicant's supervised bank account will be determined in accordance with § 1944.175. When other funds to help finance the labor housing are being supplied by the applicant from its own resources or from a loan, such other funds will be used before a grant check is requested from the Treasury or deposited in or disbursed from the supervised bank account, as appropriate to comply with § 1944.175.

(d) *Obligations incurred before loan or grant closing.* When the applicant files an application for a loan or grant, the District Director will advise the applicant that construction must not be started and obligations for work materials, or land must not be incurred or made before the loan or grant is closed, and that it is the policy of the FmHA not to permit loan or grant funds to be used to pay such obligations or reimburse the applicant for such payments. If, nevertheless, the applicant incurs expenses or makes payments for such purposes before the loan or grant is closed, the State Director may authorize the use of loan or grant funds to pay such expenses or reimburse the applicant only when the State Director finds that all the following conditions exist:

(1) The expenses were incurred: (i) after the applicant filed a written application for a loan with FmHA; or (ii) before the date of application as part of a predevelopment loan specifically intended as interim financing from a public agency or non-profit organization and prior concurrence of the National Office is obtained; or (iii) before the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such expenses from his own resources or from credit from other sources, and failure to authorize the use of loan or grant funds to pay such expenses or reimburse the applicant would impair the applicant's financial position.

(3) The expenses were incurred or payments were made for authorized loan and grant purposes.

(4) Contracts, materials, construction and any land purchase meet FmHA standards.

(5) Payment of the expenses will remove any liens which have attached and any basis for liens that may attach to the property on account of such expenses.

(e) *Grant resolution.* A resolution will be adopted by the applicant's Board of Directors and a certified copy included in the grant docket before a grant is approved.

(1) For a grant accompanied by an LH loan, the form of resolution attached as Exhibit E to this Subpart will be used with any necessary changes required or approved by the Office of the General Counsel (OGC). For a grant not accompanied by an LH loan, the form of resolution will be provided or approved by the National Office, following Exhibit E as closely as feasible.

(2) The form of resolution to be adopted by the applicant will contain policy and procedural requirements which should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing FmHA to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

(i) The rentals charged domestic farm labor will not exceed such amounts as are approved by FmHA after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(ii) The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by FmHA.

(iii) In granting occupancy of the housing an absolute priority will be given at all times to domestic farm labor.

(3) The resolution will also authorize the appropriate officers of the applicant to execute a "Labor Housing Grant Agreement," in the format of Exhibit F of this subpart. If changes are required in Exhibit F they must be approved by OGC.

(f) *Conditional obligations to repay grants.* The obligations incurred by the applicant as a condition of the grant will be in accordance with Exhibit F of this Subpart.

(g) *Loan resolution or loan agreement.* An applicant-organization will have its Board of Directors adopt a loan resolution and furnish a certified copy

for the loan docket before loan approval. The resolution will be substantially in the format of Exhibit C of this Subpart. Any necessary changes must be approved by the OGC. An individual farmowner applicant, will execute a loan agreement in substantially the same format as Exhibit D of this Subpart. Any necessary changes must be approved by OGC. The provisions of the resolution or agreement should be read and fully understood by the applicant. They will be binding on the applicant as part of the loan contract.

(h) *Restrictions on conditions of occupancy.* No organization borrower other than an association of farmers, or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing. Tenant selection should be in accordance with Exhibit B of this Subpart. No borrower or grantee will discriminate, or permit discrimination by any agent, lessee, or other operator in the use of occupancy of the housing or related facilities because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap (must possess capacity to enter into legal contract). Each borrower or grantee will comply with Subpart E of Part 1901 of this Chapter (FmHA Instruction 1901–E).

(i) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. The provision of Subpart G of Part 1802 of this Chapter (FmHA Instruction 430.2) will be followed.

(j) *Location of housing.*

(1) Project requested by organizations for multi-family type housing, as explained in Exhibit A–3 of this Subpart, must be located:

(i) In or near an established community that will provide essential facilities such as shopping, schools, medical services, and public water and/or sewer.

(ii) On a public all-weather road.

(iii) In an area where existing adequate LH will not be adversely affected. Exhibit A–4 of this Subpart may be used to identify possible projects that will be affected.

(iv) In an area that would be suitable for other types of rental housing and that would permit the property to be readily saleable.

(2) Single-family type housing, as explained in Exhibit A–3 of this Subpart, will be located:

(i) In or near an established community where essential facilities are available.

(ii) On contiguous plotted lots within the same subdivision which has been properly accepted by the proper local bodies and duly recorded for projects consisting of two or more houses.

(iii) On a publicly maintained paved road.

(iv) Where the sites are served by a central water and/or sewer system unless not economically feasible.

(3) When a mortgage is being taken on an entire farm, in the case of an individual farmowner or a family farm corporation or partnership, the single-family or multi-family units may be located on the farm as long as they are not located near farm service buildings and will be situated to allow for possible conversion to rental units should the need for farmworkers in the area change.

(k) *Implementation of OMB Circular A–95 concerning formulation, evaluation, and review of Federal programs and projects having significant impact on area and community development.* Except for Indian tribes, when projects exceed 10 individual detached units or 25 or more multiple units, the provisions of Subpart H of Part 1901 of this Chapter apply.

(l) *Guidelines for preparing environmental assessment and environmental impact statements.* All projects shall comply with Subpart G of Part 1901 of this Chapter.

(m) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Insurance Administration (FIA) of HUD. Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) applies.

(n) *LH loans to Indians secured by trust or restricted land.* Loans to individuals will be secured by a mortgage on the leasehold interest held by the applicant. The leasehold interest must meet the conditions of § 1822.7 (j) of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1, paragraph VII J). Loans to tribes or tribal corporations will be secured in accordance with §§ 1823.409 and 1823.414 of Subpart N of Part 1823 of this Chapter (FmHA Instruction 442.11, paragraphs IX and XIV A).

(o) *Refinancing LH Loans.* Each borrower, except public bodies, will be required to agree to refinance the unpaid balance of the borrower's LH loan at the request of FmHA, whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at reasonable rates and terms.

§§ 1944.165–1944.167 [Reserved].

§ 1944.168 Security requirements.

(a) *General.* Each loan will be secured to adequately protect the financial interest of the Government in the loan during its repayment period. The amount of the loan may not exceed the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior or junior liens that will or will likely to exist against the security after the loan is closed. If the State Director determines it necessary or advisable to encumber household furnishings purchased with loan funds, the State Director will, with the advice of OGC, issue appropriate instructions setting forth the manner in which household furnishings will be secured.

(b) *Loan to an individual farmowner or family farm corporation or partnership.* For every loan to an individual farmowner or family farm corporation or partnership, a real estate mortgage will be taken on the farm in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1). If requested by the applicant, a mortgage may be taken on a part of the *farm* to be improved with the LH loan which contains at least enough land to clearly provide adequate security for the loan as determined by an appraisal. In such cases, the loan must meet the following conditions:

(1) If the tract to be mortgaged is covered by a prior lien which also applies to other land, the tract to be given as security must either:

(i) Be released from the prior lien or subordinated to permit a first lien for the LH loan, or

(ii) Provide adequate security for the entire prior lien debt and the LH loan and comply with Section 1822.10 (b)(2) of Subpart A of Part 1822 of this Chapter (paragraph XB 2 of FmHA Instruction 444.1).

(2) Personal liability will be required of the stockholders or partners of a family farm corporation or partnership.

(3) The tract must have access to a public all weather road.

(c) *Loan to an organization.*

(1) A loan to an organization which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as

provided in Section 1807.2 (d) of Part 1807 of this Chapter (paragraph II D of FmHA Instruction 427.1).

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize FmHA's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified, waived, or subordinated.

(3) If it is impossible for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation, one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage or other security interest in income from the housing.

(iii) A cosigner on the promissory note, letter of credit, endorsements, assessments, user agreements, personal liability agreements, or membership subscription agreements.

(5) As a general policy, personal liability will be required of the members of an association of farmers.

§ 1944.169 Technical, legal, and other services.

(a) *Appraisals.*

(1) When real estate is taken as security, the property will be appraised by an FmHA employee authorized to make real estate appraisals. Form FmHA 426-1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security. When the security being offered is:

(i) *A farm* and involves not more than two rental units, the appraisal will be made in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1).

(ii) *Other than a farm,* and involves not more than two rental units, the appraisal will be made in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.3 which is available in any FmHA office.

(iii) Farm or nonfarm, and involves more than two rental units or dormitory-type housing, the appraisal will be made in accordance with Subpart B of Part 1809 of this Chapter (FmHA Instruction 422.2).

(2) If the loan includes funds for purchasing household furnishings or equipment which will not become part of the real estate, a narrative type appraisal, identifying the items, will be prepared by the employee preparing the real estate appraisal. The value placed on such furnishings will be based on comparable selling prices in the area.

(b) *Architectural and engineering services.* Housing and related facilities will be planned and designed to meet the needs of the type of occupants who will likely occupy it. A written contract for architectural or engineering services will be required as outlined in Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1).

(c) *Construction and development policies.*

(1) *Planning and construction.* Housing will be planned in accordance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1) and Exhibit A-3 of this subpart. Construction and development will be performed in accordance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1).

(2) *Davis-Bacon Act.* Construction financed with the assistance of an LH grant will be subject to Subpart D of Part 1901 of this Chapter regarding the Davis-Bacon Act and related requirements.

(3) *Compliance with local codes and regulations.* Planning construction, and operation of housing financed with the LH loan or grant will conform with all applicable Federal, State and local laws, ordinances, codes, and regulations governing such matters as zoning, construction, heating, plumbing, electrical installation, fire prevention, health and safety and sanitation. If there are no local or State codes and regulations governing these matters, the State Director will issue appropriate guidelines to insure that the facilities meet all FmHA requirements.

(4) *Land use objectives.* Location of projects shall, to the extent practicable, result in the preservation of Important Farmlands and Forestlands, Prime Rangeland and Wetlands. State Directors will assure that FmHA actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable. In carrying this out, State Directors will:

(i) Attempt to integrate departmental and State and local land use policies and programs.

(ii) Identify and minimize to the extent practicable adverse environmental, economic, and social effects of FmHA projects and programs.

(iii) Provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions.

(iv) Refrain from enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

(v) In unusual circumstances when the State Director is unable to make a determination regarding land classification, the State Director will request assistance from the Administrator of the Soil Conservation Service in Washington, D.C.

(d) *Optioning of land.* If a loan or grant includes funds to purchase real estate, an acceptable option to purchase or purchase agreement will be included in the application. After the loan is approved, the District Director will have Form FmHA 440-35, "Acceptance of Option," or other appropriate form of acceptance, completed, signed, and mailed to the seller.

(e) *Insurance.* The State Director will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or may be required when appropriate, to obtain liability insurance.

(f) *Title clearance and legal services.* When the applicant is an organization, or has special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from the OGC. In other cases, the provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) regarding title clearance and legal services will apply.

(g) *Use of and accountability for loan and grant funds.* Loan and grant funds and any funds furnished by the borrower for authorized purposes will be deposited and handled in accordance

with Subpart A of Part 1902 of this Chapter.

(1) Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan or grant funds could not be used, should not be deposited in the supervised bank account with loan or grant funds.

(2) For all organizations collateral will be pledged by the depository bank for any loan or grant funds or borrower contribution in accordance with Section 1803.4 of Part 1803 of this Chapter (paragraph IV of FmHA Instruction 402.1).

(3) Funds may be disbursed from the supervised bank account only for authorized loan or grant purposes.

(h) *Bond counsel.* All public bodies offering bonds as security for the LH loan are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness in accordance with § 1942.19 of Subpart A of Part 1942 of this Chapter except as provided in paragraph 1 of Exhibit H of this Subpart.

(i) *Bonding.*

(1) The provisions of Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1) pertaining to surety bonds are applicable to LH loans and grants.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the official(s) entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily saleable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan or grant funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(j) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract for these services. All such contracts will be subject to review and approval by the FmHA and, therefore, should be submitted to the FmHA before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed. Legal Service Agreement, Exhibit G, may be used.

§ 1944.170 Processing preapplications.

(a) *Preapplication.* Form AD-621, "Preapplication for Federal Assistance," with the additional information outlined in Exhibit A-1 will be submitted to the District Director. This information is used to determine the applicant's eligibility and eliminate any proposals which have little or no chance for funding. The applicant should be instructed not to prepare an application until notified to proceed.

(b) *Actions by District Director.* The preapplication, with attachments, will be reviewed by the District Director. The District Director will inspect the site and consider its desirability if it appears that the applicant is eligible. The preapplication, including the comments and recommendations of the District Director and any additional material considered necessary, will be forwarded to the State Director.

(c) *Actions by State Director.*

(1) If the applicant is an organization adopting without change the "Articles and Bylaws" prescribed by State supplements, the preapplication need not be submitted to OGC.

(2) In all other cases involving loans or grants to organizations, the docket, with any questions or comments of the State Director will be submitted to the OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(3) Determining amount of grant.

(i) *General.* The State Director will determine the amount the applicant can obtain from other sources, including an LH loan, and the amount of the grant to be made, within the limits set forth in § 1944.164(b)(2). The State Director will make this determination after thoroughly analyzing the information in the docket and receiving authorization from the National Office.

(ii) *Method of determining amount of grant.*

(A) The State Director will examine the income of the project based on the estimated rental charges and operating costs of the housing when in full operation to determine the soundness of the operations. When there is any doubt as to the probable soundness due to unrealistic planning of income or operating expenses, or for other reasons, the housing project and its operation will be discussed with the applicant to determine changes which can be made to correct the deficiencies.

(B) When a sound plan of operation has been agreed upon, the State Director will determine the amount of funds that can be expected to be available from other sources, including an LH loan. The State Director will also determine the amount of income available for loan repayments after allowing for reasonable and necessary maintenance costs, payments on debts of the applicant, and the orderly accumulation of an adequate reserve.

(C) The amount of the grant will be the difference between the amount of funds to be provided in accordance with paragraph (c)(3)(ii)(B) of this section, plus any funds available from the applicant's own resources and the total development cost of the project. In no case, however, may the amount of the grant exceed 90 percent of the total development cost.

(4) When the State Director considers it necessary, any preapplication may be sent to the National Office for evaluation and instructions.

(5) The State Director, after completing review of the preapplication material and determining the amount of grant, will notify the District Director of the State Director's determination and authorize the District Director to prepare and execute Form AD-622, "Notice of Preapplication Review Action." The District Director will forward the original to the applicant, a copy to the State Director, and a copy to the case file.

§ 1944.171 Preparation of completed loan and/or grant docket.

(a) *Information needed.* If the applicant has been requested to file an application, Form AD-625, "Application for Federal Assistance (Short Form)," the additional information as outlined in Exhibit A-2 will be submitted to the District Director.

(b) *District Director's responsibility.* As the information for the loan docket is being developed, the District Director will work closely with the applicant. The District Director will review and verify the information furnished for correctness, adequacy, and completeness. The District Director will determine that the market survey is adequate and that the market survey report is accurate. The District Director will evaluate the manner in which the applicant plans to conduct its business and financial affairs and comment on the adequacy of the management.

(c) *County Committee certification.* County Committees will not be used to review LH loan and/or grant applications.

(d) *Assembly, review, and distribution of complete loan and/or grant docket items.* When all items required for the complete loan and/or grant docket have been furnished, they will be examined thoroughly by the FmHA official who will approve the loan and/or grant to make sure they are properly and

accurately prepared and are complete in all aspects, including dates and signatures. The loan and/or grant docket items will be assembled in the following order for distribution after approval:

[15] 0017

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for docket	Copy for borrower
AD-621	Preapplication for Federal Assistance	3	1	2-O&1C	1-C
Exhibit A-1	Information to be Submitted with Preapplication for Labor Housing (LH) Loan or Grant.	2	0	1-0	1-C
	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by § 1944.170(a).	1		1-0	
AD-622	Notice of Preapplication Review Action	3		2-C	1-0
AD-625	Application for Federal Assistance (Short Form)	3	1	2-O&1C	1-C
Exhibit A-2	Information to be Submitted with Application for Federal Assistance (Short Form).	2	0	1-0	1-C
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O&3C	
FmHA 440-1	Request for Obligation of Funds	4	2-O&1C	3-O&2C	1
FmHA 400-1	Equal Opportunity Agreement	2		1-0	1-C
**FmHA 400-3	Notice to Contractors and Applicants	3		2-O&1C	1-0
FmHA 400-4	Nondiscrimination Agreement	2	1	1	1
**FmHA 400-6	Compliance Statement (when applicable)	3		2-O&1C	1-C
	**Evidence of Legal Authority (copies or citation of specific provisions of State constitution and statutory authority).	2	1	1-0	1-C
	Appraisal report with attachments	1		1-0	1-C
FmHA 426-1	Valuation of Buildings	1		1-0	
FmHA 440-9	Supplementary Payment Agreement	2	1	1-0	1-C
Other Loan Docket Items. Preliminary Title Opinion and a Final Title Opinion or a title insurance binder, a mortgage title insurance policy and a copy of deed, purchase contract, or other instrument of ownership.					
	*Proof of Organization (certified copy of charter or articles of incorporation).	2	1	1-0	1-C
	*Certified copies of bylaws or regulations	2	1	1-0	1-C
	*List of names and addresses of officers, directors, and members, and membership interest held by each.	2	1	1-0	1-C
	*Certified copy of Loan Resolution	1	1	1-0	
	Loan Agreement, if applicable	2	1	1-0	1-C
	**Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction.	3	1	1-0	1-C
Exhibit A-5	Statement of Budget, Income, and Expense	2	1	1-0	1-C

*When applicant is an organization.
**One copy for contractor.

When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage(s).

(e) *Submission of docket to State Office.* The loan and/or grant docket, including comments and recommendations by the District Director, will be submitted to the State Office. The State Director will prepare, with the advice of OGC and include in the docket a memorandum to the District Director which will either require additional information if the material submitted is inadequate, or will set forth the conditions of loan approval. If the State Director determines that the loan and/or grant should be approved, the State Director will approve the loan and sign the memorandum to the District Director.

(f) *Submission of docket to National Office.* The final loan and/or grant docket need not be submitted to the National Office unless required by an authorizing memorandum resulting from compliance with § 1944.170.

(g) *Press release.* When it is determined that a loan and/or grant can be approved, a press release will be prepared in accordance with FmHA Instruction 2015-C which is available in the FmHA State and National Offices.

§ 1944.172 [Reserved]

§ 1944.173 Loan and grant approval—delegation of authority.

The State Director is authorized to approve loans and/or grants in accordance with this Subpart and Subpart A of Part 1901 of this Chapter. The State Director may delegate loan or grant approval in writing to State Office employees other than District Directors. No LH grant may be approved by the State Director without the prior consent of the National Office.

(a) *Action before to loan or grant approval.* The loan or grant approval official is responsible for reviewing the docket to determine that the proposed loan and/or grant complies with all pertinent regulations, instructions, and directives. In making this review, the approval official will determine that:

(1) The applicant is eligible.

(2) The funds are requested for authorized purposes.

(3) The proposed loan or grant is sound.

(4) The security is adequate for the loan.

(5) All preapproval requirements have been met.

(6) Compliance with Title VI of the Civil Rights Act will be met.

(7) All other requirements will be met.

(b) *Approval of a loan or grant.* When a loan and/or grant is approved:

(1) The approval official will prepare and sign Form FmHA 440-1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station and request that loan and/or grant funds for a particular project be obligated.

(2) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440-1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of the request.

(3) The individual making the request will record the date and time of the request and sign Form FmHA 440-1 in section 37.

(4) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which a request will be processed on the next working day.

(5) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds were reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance

Office. The Finance Office will mail to the State Offices Form FmHA 440–57, "Acknowledgment of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item No. 9 on the Forms Manual Insert (FMI) for Form FmHA 440–57. Form FmHA 440–57 will be prepared and distributed in accordance with the FMI.

(6) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 444–5 accompanied by a copy of any National Office memorandum authorizing approval, will be mailed to the Finance Office and a copy to the National Office. Forms FmHA 440–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds for not-for-profit organizations and public bodies, the State Director will call the Information Division in the National Office as required by FmHA Instruction 2015–C. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 440–1 on the obligation date. The State Director or a designee will record the actual date of applicant notification on the original of Form FmHA 440–1 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(7) Determine the maximum rental rates to be charged domestic farm labor for occupancy of the housing, and advise the applicant, by memorandum, of these maximum rates. In determining the maximum rental rates due consideration must be given to the income and earning capacity of the prospective occupants of the housing and the cost of operating and maintaining such housing. As a general guide, the rental charges should not exceed 25 percent of the occupant families' estimated adjusted annual income.

(c) *Disapproval of a loan or grant.* When a loan and/or grant is disapproved after the docket has been developed, the reasons for such action will be shown on the original form FmHA 440–1. Form FmHA 440–1 will be initialed and dated. The District Director will notify the applicant in writing of the disapproval of the loan and the reasons therefore and advise them of their right to appeal in accordance with Subpart B of Part 1900 of this Chapter. The disapproved docket will then be handled in accordance with Subpart A Part 2033 of this Chapter (FmHA Instruction 2033–A). Any appeals as a result of disapproval will be handled in accordance with Subpart B of Part 1900 of this Chapter.

§ 1944.174 Distribution of loan and/or grant approval documents.

(a) *OGC.* For a loan to an organization, or in special cases, the approved loan or grant docket, including any title evidence, will be sent to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of the required loan and grant resolution, grant agreement or the original executed, witnessed loan and grant agreement must be supplied by the applicant in time to be included in the loan or grant docket. No docket will be considered which fails to include such a required resolution or agreement. OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any futher instructions needed in closing the loan.

(b) *State Central Information Reception Agency (SCIRA).* Standard Form 424, "Federal Assistance," will be prepared by the State Director within 7 days after approval of an initial or subsequent grant or after a change in the amount or purpose of a grant in accordance with Subpart J of Part 1901 of this Chapter.

§ 1944.175 Actions subsequent to loan and/or grant approval.

(a) *Interim financing from commercial sources.* Interim financing should be used only when a loan or combination loan and grant exceeds $50,000 provided funds can be borrowed at reasonable interest rates from commercial sources for the construction period. When interim commercial financing is used:

(1) The docket will be processed to the stage where the FmHA loan or combination loan and grant would normally be closed. FmHA loan or combination loan and grant funds will be obligated before the applicant proceeds with the final arrangements for interim commercial financing.

(2) The State Director or District Director may deliver a copy of Form FmHA 440–57 as evidence of the FmHA commitment, if necessary, or a letter stating that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions. See Exhibit I for a sample letter that may be used.

(3) FmHA will undertake similar functions as if FmHA funds had been advanced from the standpoint of approving construction contracts and the monitoring of construction.

(4) The supervised bank account will normally not be used for funds obtained through interim commercial financing. However, the District Director will approve Form FmHA 424–18, "Partial Payment Estimate," to insure that funds are used for authorized purposes.

(5) When the interim financing funds have been expended, the FmHA loan or combination loan and grant will be closed and permanent instruments will be issued to evidence the FmHA indebtedness. The FmHA loan or combination loan and grant proceeds will be used to retire the interim commercial indebtedness.

(6) Before the FmHA loan or combination loan and grant is closed, the applicant will be required to provide the District Director with statements from the contractor(s), engineer, and attorney that they have been paid in full in accordance with their contracts or other agreements and that there are no unpaid obligations outstanding in connection with the construction of the project.

(b) *Multiple advances of LH loan and/or grant funds.* In the event FmHA provides grant only assistance, or if interim commercial financing is not available for a loan or combination loan and grant in excess of $50,000, multiple advances will be used subject to the following:

(1) When relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such funds in the supervised bank account and reduce the amount of required collateral.

(2) Except as indicated in paragraph (b)(1) of this Section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract or to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest, and other expenses, as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ————," modified as

needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director. After the District Director determines that the estimate prepared by the borrower is adequate, the District Director will request the advance by indicating the amount on Form FmHA 440–57 in accordance with the FMI and forwarding it to the Finance Office, St. Louis, Missouri. As an example, for a loan and/or grant of $100,000, the advances may be made as follows: Assuming that the loan and/or grant will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land acquisition	5,000
Architectural	4,000
Legal	1,000
Total	$40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	$21,000

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed.

(3) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (a) or (b) of this section. The District Director or the District Director's delegate will then order the loan and/or grant check so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan and/or grant to be increased or decreased before loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed.

(e) *Cancellation of loan.* Loans and/or grants may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," in an original and two copies (3 copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the State Director will forward the original request to the Finance Office after making appropriate adjustments in the records to control loan allocations. A copy of Form FmHA 440–10 will be sent to the National Office and the District Office.

(2) If the loan or grant check is received in the District Office, the District Director will return it to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440–10.

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

(f) *Handling the loan or grant check.* The loan or grant check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 which is available in any FmHA Office and Subpart A of Part 1902 of this Chapter.

(g) *Property insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

§ 1944.176 Loan and/or grant closing.

(a) *Applicable instructions.* LH loans and/or grants will be closed in accordance with applicable provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) and State supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent to OGC for additional closing instructions. A family farm corporation, partnership, or an association of farmers applicant may use its attorney to close the loan in accordance with applicable loan closing instructions provided the attorney is not a member, officer, director, trustee, stockholder or partner of the applicant entity. Nonprofit organizations may use an attorney who is a member of their organization. The cost incurred by the organization for legal services must be reasonable and competitive for the area.

(b) *LH grant agreement.* A LH grant agreement, prepared and authorized as provided in § 1944.164(g) of this Subpart, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed with the mortgage or other security instrument in the County Office case file.

(c) *Mortgage.* Unless the OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427–1 (State), "Real Estate Mortgage for _____," will be used. For loans and/or grants to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, style of execution, acknowledgment, and any other provisions.

(1) The mortgage or other instrument will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

> This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (Date), which is hereby incorporated herein by reference.

(3) When the borrower is not an individual farmowner, or an association of farmers, the mortgage will include the following provision:

> Borrower will not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed on any particular farm or other place, or work for or be employed by any particular person, firm, or interest.

(4) For a grant made at the same time as an LH loan, the mortgage securing the loan will contain a provision making it also secure the applicant's obligations under the LH grant agreement. For a grant not made at the same time as an LH loan, the type of security instrument will be determined by the National Office based upon the State Director's recommendation and the advice of OGC.

(d) *Promissory Note.* (1) The total amount to be shown on the note will be shown on Form FmHA 440–1. The note will be dated the date of loan closing as authorized in Part 1807 of this Chapter

(paragraph II F 8 of FmHA Instruction 427.1).

(2) Form FmHA 440–16, "Promissory Note" will be used for all LH loans. Payments on LH loans will be scheduled on an annual basis and in accordance with the FMI. Form FmHA 440–9 will be used to schedule payments on a monthly, quarterly, or semi-annual basis in accordance with the expected schedule of income from the project.

(3) Deferred principal payments may be permitted up to 2 years when determined to be necessary and advisable. Accrued interest must be paid annually; however, smaller than regular payments of principal or no payments of principal may be provided for the first and second installments after loan closing.

(4) The note(s) will be signed in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) and any supplemental instructions from OGC.

(5) Immediately after loan closing the original notes and copies will be distributed in accordance with the FMI.

(6) For a loan to a public body the forms of obligation will be determined in accordance with § 1942.19 of Subpart A of Part 1942 of this Chapter.

(e) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(f) *Date of closing—establishment of account.*

(1) An LH loan and/or grant is considered closed when the security instrument is filed of record, or, if no security instrument is filed of record, when the loan or grant funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan and/or grant is closed, the account and case folder will be established in accordance with applicable FmHA regulations (FmHA instructions 405.1 which is available in any FmHA Office and FmHA Instruction 2033–B which is available in the FmHA State and National Office.

§ 1944.177 Coding loans and grants as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan or grant when the total number of units are built or purchased at one place at one time. A subsequent loan or grant will be so coded when an additional loan or grant is necessary to complete the units planned with the initial loan or grant. As an example, the borrower may obtain initial loans or grant for more than one project in the same district, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 440–1, FmHA 440–57, and FmHA 444–5.

§ 1944.178 Complaints regarding discrimination in use and occupancy of LH.

Any occupant or applicant for occupancy or use of such LH housing or related facilities who believe they have been discriminated against because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap (must possess capacity to enter into legal contract) may file a complaint with the District Director or State Director. Any complaint will be referred through the State Director to the National Office.

(a) the complaint should be in writing and signed by the complaintant. However, the complaint may be phoned to a FmHA office. In any case, the complaint should contain the following information (the FmHA employees will provide assistance as needed in preparing the complaint).

(1) The name and address (including telephone number) of the complaintant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) The District Director or State Director will acknowledge receipt of the complaint and promptly forward it to the National Office.

(c) Attached to the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to conduct the investigation by the National Office.

(d) The National Office will determine whether discrimination did in fact occur. If necessary, appropriate steps will be taken to ascertain the essential facts.

(e) If it is found that the borrower's nondiscrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(f) If it is found that the complaint is without substance, the parties concerned will be so notified.

(g) If the borrower fails to take such corrective action and assure future compliance, the Administrator may take further appropriate action.

§§ 1944.179–1944.180 [Reserved].

§ 1944.181 Loan servicing.

LH loans and grants will be serviced in accordance with Subpart B of Part 1924 of this Chapter and Subpart G of Part 1802 of this Chapter (FmHA Instruction 430.2). Requests for rent increases will be processed in accordance with Exhibit F of Subpart G of Part 1802 of this Chapter (FmHA Instruction 430.2, Exhibit F).

§ 1944.182 Rental Assistance.

Rental assistance may be provided to eligible tenants in LH projects in accordance with Exhibit R of Subpart D of Part 1822 of this Chapter (Exhibit R of FmHA Instruction 444.5). Income will be verified for LH tenants requesting rental assistance from all easily identifiable sources by using form FmHA 410–5, "Request for Verification of Employment", income or portions of income from sources that are not known or not easily contacted will be verified from the best information obtainable. This may include copies of payroll records, tenant's own records, contacts with individuals who may be knowledgeable of the tenant's income, or, if no other verifiable data is available, a notarized affidavit from the tenant attesting to his/her previous year's income. The borrower and tenant will execute Form FmHA 444–8, "Tenant Certification". The borrower will be expected to certify only that the income is correctly stated based on the best information available. The borrower will be expected to have the tenants that occupy the project year round and do not have easily verifiable income report monthly income to enable accurate income certification at the end of one year of occupancy.

§§ 1944.183–1944.200 [Reserved].

Labor Housing Loan and Grant Application Handbook

Introduction

Development of a proposal for Labor Housing (LH) loan and grant can be an expensive proposition and the Farmers Home Administration (FmHA), therefore, encourages applicants to develop applications in two phases which are termed preapplication phase and application phase. In development of the items required for the preapplication phase, applicants should understand that the Government is in no way obligated to commit loan or grant funds to the proposed project and therefore, they should not, at this stage, incur expenses for the optioning of land, architectural services, engineering services, or other purposes unless they will be able to use their own funds to pay these expenses. In addition, before the development of a preapplication, applicants should meet with the local FmHA District Director to gain a basic understanding of the eligibility and other requirements of the LH loan and grant program.

Information To Be Submitted With Preapplication for Labor Housing Loan or Grant

The following information should be submitted with Form AD–621, "Preapplication for Federal Assistance":

1. *Eligibility:* a. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member. The applicant, must have or be able to obtain initial operating capital of at least 2 percent of the total development cost of the project. A statement should, therefore, be included explaining how such funds will be provided. Loan or grant funds may be used to provide the required inifial operating capital for nonprofit and State or local public agencies.

b. All applicants, except State and local public agencies, must provide evidence that they are unable to obtain credit from other sources. Letters from credit institutions who normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided.

c. If a Labor Housing (LH) grant is requested, a statement explaining why the housing cannot be provided without a grant. This statement should provide preliminary estimates of the rents required without a grant, and the rents required with the proposed grant.

d. A statement of the applicant's experience in operating LH or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience. (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

e. A brief statement explaining the applicant's proposed method of operation and management. This does not have to be a full-fledged management plan, as outlined by Exhibit B, however, it should generally explain how the applicant proposes to operate the facility. (i.e., on-site manager, contracting for management services, etc.).

f. Organization-type applicants must provide a copy of or an accurate citation to the special provisions of State law under which the applicant is or is to be organized, a copy of the applicant's charter, Articles of Incorporation, bylaws, and other basic authorizing documents; names occupations, and addresses of the applicant's members, directors, and officers; and, if a member or subsidiary of another organization, its name, address, and principal business.

2. *Need and demand.* A preliminary survey should be conducted to identify the supply and demand for LH in the area. This survey should address or include the following items:

a. The annual income level of farmworker families in the area and the probable income of those farm workers who are most apt to occupy the proposed unit.

b. A realistic estimate of the number of farmworkers who are home-based in the area and the number of farmworkers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families). Much of this information may be available from the local office of the Rural Manpower Services section of the Department of Employment Services.

c. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Extension Service office or from the Agricultural Stabilization and Conservation Service.

d. The overall occupancy rate for comparable rental units in the area and rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.). This information may be available from census data, local planning organizations, or local housing authorities.

e. The number, condition, adequacy, ownership, and rental rates for units currently used or available to farmworkers. This information may be available from local farmworker advocacy groups, Rural Manpower Services, or social service agencies.

f. A general description of the units proposed, including number, type, and size and an estimate of the total development cost and amount of contribution by the applicant. This should also include an estimated projection of the rental rates to be charged.

Note.—The market survey is one of the most important determinates of the overall feasibility of the proposed project. Therefore, the applicant may wish to do a more detailed study of the market in accordance with item 9 of Exhibit A–2. Endorsement of the proposal by community leaders will not be required.

3. *Additional information.* The following items should be provided only if they are readily available:

a. A map of the proposed site showing the location of the site and supporting information on the neighborhood and available facilities, such as distance to shopping, churches, schools, available transportation, drainage, sanitation facilities, water supply, and access to other services such as doctors, dentists, and hospitals.

b. Any available sketches or schematics of the proposed housing including plot plans, building layouts, and construction types.

The information required by the preapplication will be carefully reviewed for eligibility and feasibility by appropriate Farmers Home Administration (FmHA) officials. As soon as a decision is reached, the applicant will be advised of the availability of funds for the project, via Form AD–622, "Notice of Preapplication Review Action."

Upon receipt of Form AD–622 indicating favorable action by FmHA, the applicant, if proposing more than 10 single detached units, or 25 multi-family type units, should submit Form AD–621, "Preapplication for Federal Assistance," with required information to the appropriate State and/or area-wide clearinghouses so that required A–95 reviews can be conducted and comments received from appropriate State agencies before the final application is submitted. Local FmHA District or State Offices can provide names and addresses of appropriate clearinghouses and details on the information which must be submitted.

Information To Be Submitted With "Application for Federal Assistance (Short Form)"

After the applicant has received the signed Form AD–622, "Notice of Preapplication Review Action," authorizing the applicant to proceed to develop a final application, the applicant and the applicant's architect should meet with the Farmers Home Administration (FmHA) architect/engineer and other officials responsible for loan processing. During this preprocessing meeting, FmHA will discuss the services which the applicant's architect will be expected to provide and will also explain the items needed to complete the final application.

If after the preprocessing meeting the applicant believes that the Labor Housing (LH) project can be developed within the guidelines required by FmHA, the following information should be submitted with Form AD–625, "Application for Federal Assistance (Short Form)":

1. If applicable, evidence that Form AD–621, "Preapplication for Federal Assistance," has been filed with the appropriate State or local clearinghouses for A–95 review along with any comments received from the clearinghouses.

2. Proposed contracts for architectural, engineering, and legal services as applicable. FmHA approval of these contracts should be obtained prior to execution of the contract.

3. A plot plan and detailed preliminary drawings and specifications prepared in

accordance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1). Exhibit A–3 provides FmHA's general philosophy and standards concerning the construction of LH facilities.

4. A detailed cost breakdown of the project for items such as land purchase, right-of-ways, building construction, equipment, utility connections, on-site improvements, architectural and/or engineering services, and legal services. The cost breakdown should itemize labor and material unit costs. If a LH grant is proposed, construction will be subject to the provisions of the Davis-Bacon Act. LH grant applications should, therefore, obtain a copy of Subpart D of Part 1901 of this Chapter which explains the Davis-Bacon requirements.

5. Satisfactory evidence of review and approval of the proposed housing, including compliance with zoning requirements by State and local officials, as required by applicable State or local laws, ordinances, or regulations.

6. If not already provided in the preapplication submittal, a map of the proposed site showing the location of the site in relation to available facilities such as schools, shopping, churches, hospitals, etc. In addition, supporting information should be provided indicating that essential utilities such as sewer, water, electricity, etc., will be available to the project. (See Exhibit A–3 for FmHA's general requirements for location of LH facilities.)

7. Form FmHA 440–46, "Environmental Impact Assessment," for all projects involving more than 25 individual detached or 50 multi-family units. This is not a request for an Environmental Impact statement. Parts I, II and III should be completed by the applicant. The remainder will be completed by FmHA.

8. A description of and justification for any related facilities such as community or multi-purpose type buildings, cafeterias, dining halls, infirmaries, child care facilities, etc. To be included for funding by FmHA, the facilities should not be of extravagant design and their size must be commensurate with the needs of the farm workers who will occupy the housing facility. Any long-term agreements which are contemplated with other agencies for services such as manpower training, migrant health services, child care, and education programs should be explained and included as justification for the related facilities.

9. A detailed market analysis addressing in detail the items required under item 2 of the preapplication submittal should be conducted in accordance with the following:

a. The market area (i.e., the area from which tenants can reasonably be drawn for the project) should be clearly identified.

b. Adequate existing units which are currently available or which could become available should be surveyed and information obtained and recorded in a Format similar to Exhibit A–4.

c. Individual farmworkers and farmworker groups should be contacted and their ideas obtained concerning the type of housing which would gain the greatest acceptance. (This information may not seem important at the outset of the loan if there is a pressing need for LH, however, to assure a long-term demand for the project consideration should be given to the views of the prospective tenants.)

d. The above items should then be correlated to arrive at a realistic estimate of the total need for units, type of units, estimated occupancy, and maximum rental rates which can be charged for the units, and the type of amenities or related facilities which should be provided.

10. Proposed, detailed operating budgets for: (a) the first year of operation, and (b) a typical year's operation. The overall percentage of occupancy should be based upon the data collected in the market analysis. Operating costs should be realistic and should reflect somewhat higher than normal maintenance costs and an allowance for the establishment of a reserve as required by the loan agreement. The budget should be prepared in a format similar to Exhibit A–5.

11. A management plan which includes the applicable items of Exhibit B.

12. When the loan is to be secured by a junior real estate lien, certain agreements will be required from prior lien holders. The local or State FmHA official will provide the applicable agreements.

13. An option to purchase or other evidence of ability to purchase or evidence of ownership for the proposed site.

When the final application is assembled it should be submitted to the local FmHA District Office for review and submission to the State Office. As soon as a final decision to approve the loan is reached, the applicant will be notified and advised to proceed with the preparation of final plans and specifications, contract documents, and other items needed to close the loan. *The applicant should not proceed with bid advertisement or contract awards until advised to proceed by FmHA.*

Labor Housing Construction Guidelines

I. *Introduction:* This Exhibit provides the Farmers Home Administration's (FmHA's) general guidelines and policies concerning the planning, location, and construction of housing for farmworkers. The type of housing should be in accordance with the needs of the prospective tenants. Multi-family type units are encouraged whenever possible; however, when planning units for farmworker families, lower density building design and layout is normally desirable. Housing should be designed in such a manner that it will be decent, safe, sanitary, and modest in size and cost. Actual plans, specifications, and contract documents should be prepared in accordance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1).

II. *Types of housing and appropriate standards:*

a. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. These type units should meet the following standards:

1. All sites shall be planned and constructed in accordance with Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5).

2. All planning and construction shall be in conformance with the Minimum Property Standards (MPS) and applicable State and local codes.

b. Multi-family type housing is defined as a project or a number of projects encompassing a building or buildings containing more than one dwelling unit and may include mixtures of detached and multi-unit structures in a project. These type units should meet the following standards:

1. All housing designed for year round occupancy will be planned in compliance with the MPS and will be compatible with conventional rental type housing.

2. Housing for seasonal occupancy (less than six months) shall be so designed and constructed that conversion to MPS housing will be possible without any major alterations to the work in place. Therefore, exterior structural elements and dimensions (foundations, exterior and load-bearing walls, and roofing) and all permanent systems constructed must meet MPS requirements.

(i) The interior design may be altered to allow additional living quarters per building, minimum interior finishings, reductions in room sizes and storage spaces, and the omission of heating facilities and insulation depending on the climate and proposed season of occupancy. However, bedrooms, bathroom, and living/cooking area must be adequate for the occupancy proposed for the unit and meet all local health and safety requirements.

(ii) The on-site distribution systems for utilities, water supply, and sewage disposal should meet MPS requirements for interior design (so that they would not have to be replaced in the event of project conversion).

(iii) Siting should allow for properly planned access, parking, and open space requirements for standard MPS projects, but access need only be developed to the extent of providing all weather surfaces.

(iv) In all cases, housing for seasonal occupancy constructed or repaired with LH funds will satisfy the health and safety standards set by the Department of Labor (DOL) Occupational Safety and Health Administration (OSHA).

4. All planning and construction should be in conformance with applicable State and local codes.

BILLING CODE 3410-07-M

SURVEY OF EXISTING LABOR HOUSING

Exhibit A-4

Name of Town _____

Date of Survey _____

Name and Address of Rental Units	Number, Size and Monthly Rent of Units in each Project												Project Type **	Age	Condition of Bldg.	Area
	*0 or 1 BR			2 BR			3 BR			4 or 5 Br						
	No.	Size	Rent	No.	Size	Rent	No.	Size	Rent	No.	Size	Rent				

*Circle Applicable Type Units
If both 0 and 1 Br or 4 and 5 Br units in same project use two lines

** i.e. Number of stories; number of units per building in project. Identify architectural style

Exhibit A-5

STATEMENT OF BUDGET, INCOME, AND EXPENSE (Excluding Depreciation)

Name of Borrower _____
Address _____
Project Location _____
Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount $ _____

	1st Year	Typical Year	Typical Yr w/ Grant	Typical Yr w/o Grant
1. Total Operation and Maintanence Expense (From Reverse)				
2. Transfer to Reserve				
3. FmHA Payment				
4. Return to Ownership@-%				
5. Other Authorized Payments				
6. Authorized Capital Improvements				
7. Total Income Needed (Add lines 1-6)				
Other Income				
8. Laundry				
9. Interest				
10. Other (Specify)				
11. Total Other Income				
12. Rental Income Needed				
Rental Income				
13. ___ Units@ ___ month,week				
14. ___ Units@ ___ month,week				
15. ___ Units@ ___ month;week				
16. ___ Units@ ___ month,week				
17. Vacancy Allowance	( )	( )	( )	( )
18. Rental Income (Add lines 13-16 less 17)				
19. Excess or (Deficit) (lines 18 less 12)				

Certified Correct

_____ by _____
date Applicant's or Borrower's signature

OPERATION AND MAINTENANCE EXPENSES:

	(1)	(2)	(3)	(4)
1. Salaries and Wages	$	$	$	$
Caretaker	$	$	$	$
Manager	$	$	$	$
2. Utilities	$	$	$	$
Water	$	$	$	$
Sewer	$	$	$	$
Gas	$	$	$	$
Electricity	$	$	$	$
Heating	$	$	$	$
Garbage and Trash Removal	$	$	$	$
Telephone	$	$	$	$
Other	$	$	$	$
3. Maintenance	$	$	$	$
Janitor's Supplies	$	$	$	$
Repairs	$	$	$	$
Building Equipment Repairs	$	$	$	$
Exterminating	$	$	$	$
Decorating	$	$	$	$
Grounds Maintenance	$	$	$	$
Furniture & Furnishing Replacements	$	$	$	$
Other	$	$	$	$
4. Insurance	$	$	$	$
Fire and Extended Coverage	$	$	$	$
Liability	$	$	$	$
Compensation	$	$	$	$
Other	$	$	$	$
5. Taxes	$	$	$	$
Real Estate	$	$	$	$
Social Security	$	$	$	$
Special Assessments	$	$	$	$
Income	$	$	$	$
Other	$	$	$	$
6. Other Expenses	$	$	$	$
Accounting	$	$	$	$
Legal	$	$	$	$
Advertising	$	$	$	$
Interest (FmHA)	$	$	$	$
Other Interest	$	$	$	$
7. Total Operation and Maintenance Expenses (Add Section 1 thru 6) (Total to Line 12 Front Side)	$	$	$	$

BILLING CODE 3410-07-C

Exhibit B—Management Plans

The management of a rental project, regardless of the type of tenants, is one of the most, if not the most, important determinants of the success or failure of a proposed project.

The management plan, therefore, as the primary management charter should constitute a comprehensive description of the detailed policies and procedures to be followed in managing the project and should as a minimum address the following items:

1. *Staffing.* The number, qualifications required, and duties of all personnel who will be hired to operate the project. Equal employment opportunity should be provided and special consideration should be given to hiring Spanish-speaking persons if warranted by the expected occupancy. Roles and responsibility's of owner and of manager should be specified.

2. *Marketing.* The marketing efforts or techniques which will be used to obtain initial rent up and occupancy of future vacancies (i.e. advertisement, contacts with social service agencies, local farmers, etc.). Definite dates for opening and closing of the project will be spelled out for projects constructed for seasonal purposes.

3. *Tenant selection.* Domestic farm workers must be given absolute priority in renting available units. Other selection criteria should be specifically outlined in the management plan. Arbitrary restrictions as to family size, age of children, or other similar items are prohibited, however, the size of unit assigned to a family should be commensurate with its needs. Rejected tenant applications should be maintained for a minimum of 1 year and applicants must be advised in writing of the reasons for rejection.

4. *Ineligible tenants.* Units can be rented to other than farm workers when they are not needed by farm workers (i.e., during the off season), however, the leases must be on a short-term basis, normally not exceeding 30 days, and ineligible tenants must be advised that they will have to vacate the units if an eligible farm worker becomes available. To avoid future problems, occupancy by ineligibles should be avoided if at all possible. Written permission to rent to ineligibles must be obtained from the District Director before allowing the ineligible tenant to occupy LH projects.

5. *Lease or occupancy agreement.* A copy of any proposed lease or occupancy agreement should be submitted with the plan. The lease or occupancy agreement should clearly outline the responsibilities of the tenant and landlord.

6. *Counseling services.* Pre- and post-occupancy counseling services, which will be provided to tenants by borrowers to acquaint them with the project or otherwise assist them should be thoroughly explained.

7. *Collection of rent.* The system which will be used in the collection of rent must be outlined including proper provisions for the internal control and security of cash collections, followup on overdue accounts, persons responsible for collections, recordkeeping, and conditions for the return of security deposits, if required.

8. *Evictions.* The plan should spell out the specific reasons which warrant eviction and the steps which will be taken to resolve problems before eviction, including provisions for appeal. Voluntary compliance with the lease or occupancy agreement should be emphasized and every effort should be made to utilize the benefits available through local social service agencies and other community organizations.

9. *Maintenance and repairs.* A schedule for preventive maintenance and the procedure for handling service requests from individual tenants, including procedures for the handling of emergency repairs on a 24-hour basis should be outlined.

10. *Records and reports.* The type of recordkeeping system which will be established and the person or persons who will be responsible for keeping records and submitting required reports to FmHA. Subpart G of Part 1802 of this Chapter (FmHA Instruction 430.2) outlines the reports required and the formats for these reports. This Instruction is available from the local District Office.

11. *Fidelity bonds.* Bonding should be provided for all persons entrusted with the receipt, custody, and disbursement of funds and custody of other negotiable or readily salable personal property. The amount of the bond should be at least equal to the maximum amount of money or property which the individual will have control of at any one time.

12. *Tenant councils.* Tenant councils should be encouraged and should be given an input into proposed changes in lease agreements, staff selection, eviction, and in some cases tenant selection and other management decisions which have a bearing on the tenant's overall situation. Provisions should also be outlined for the democratic election of tenant councils.

13. *Rent increases.* Requested or proposed rent increases should be handled in accordance with Exhibit F of Subpart G of Part 1802 of this Chapter. (FmHA Instruction 430.2, Exhibit F).

14. *Non-discrimination.* The plan should address the policy of non-discrimination in tenant selection and employee hiring in accordance with Form FmHA 400–4, "Non-Discrimination Agreement," and the affirmative action planned in the recruitment of employees and tenants.

15. *Other items.* Any other items which have a bearing on the operation and management of the project.

16. The management plan must be signed and dated by the borrower or the borrower's authorized representative.

Exhibit C

(LH Insured Loan to Nonprofit Corporation)

LOAN RESOLUTION OF

———————— ——, 19——

RESOLUTION OF THE BOARD OF DIRECTORS OF ————————
PROVIDING FOR BORROWING $————
TO FINANCE HOUSING AND RELATED FACILITIES FOR DOMESTIC FARM LABOR, THE COLLECTION, HANDLING, AND DISPOSITION OF INCOME, THE ISSUANCE OF INSTALLMENT PROMISSORY NOTE AND REAL ESTATE SECURITY INSTRUMENT, AND RELATED MATTERS

Whereas ————————
(herein referred to as "Corporation") is a nonprofit corporation duly organized and operating under (authorizing State statute)
————————;

The Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain housing and related facilities for domestic farm labor; The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill;

Be it resolved:

1 *Application for Loan.* The Corporation shall apply for and obtain a domestic farm labor housing loan (herein called "the loan") of $—— through the facilities of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture (herein called "the Government") pursuant to title V of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide housing and related facilities for domestic farm labor. Such housing and facilities and the land constituting the site are herein called "the housing."

2 *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of ———— years, bearing interest at the rate of 1 percent per annum, and containing other terms and conditions prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instruments, and any related agreements are herein called the "loan obligations."

3 *Equal Opportunity and Nondiscrimination Provisions.* The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause," to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4 *Supervised Bank Account.* The proceeds of the note and the amount of $———— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depository bank in advance in accordance with the U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ———— of the Corporation and countersigned by the County Supervisor of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5 *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by Section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6 *General Fund Account.* By the time the loan is closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations.

7 *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance, normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8 *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9 *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $————[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $————[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the "prepayment reserve," by which the Corporation is "ahead of schedule" as defined in the regulations of the Farmers Home Administration. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corportion—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeapordizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9(b) shall be applied promptly on the loan obligations.

10 *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use or permit use of the housing for any purpose other than as housing and related facilities for domestic farm labor.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor cause or permit any transfer or encumberance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not cause or permit the issuance or transfer of any stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7.

(e) Submit the following to the Government for prior review and approval not less than —— days before the effective dates, unless approval is waived by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11 *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 *General Provisions.*

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable, and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the Corporation will permit representatives of the Government to inspect and make copies of any of the records of the Corporation pertaining to this loan. Such inspection and copying may be made during regular office hours of the Corporation, or any other time the Corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments or agreements as the "Loan Resolution of (date of this resolution) ——————19——."

———————————

———————————

———————————

Certificate

The undersigned, ——————, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ——————19——, which has not been altered, amended, or repealed.

——————

(Date)

——————

(Secretary)

Exhibit D—Loan Agreement

(LH Insured Loan to Individual)

1. *Parties and Terms Defined.* This agreement dated —————— of the Undersigned

———————————,

herein called "Borrower" whether one or more, whose post office address is

———————————,

with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of $—————— made or insured, or to be made or insured by the Government pursuant to title V of the Housing Act of 1949 to provide housing and related facilities for domestic farm laborers. Such housing and related facilities, together with the site, may be referred to herein as "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument, and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration Form FmHA 400–4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* The proceeds of the note and the amount of $—————— to be contributed by the borrower from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the borrower shall be made only on checks signed by the —————— of the borrower and countersigned by a representative of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the

[1] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as indicated by footnote 2.

project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on his books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8(a).

5. *General Fund Account.* By the time the loan is closed Borrower shall from his own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. Borrower may also in his discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in section 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations.

6. *Operation and Maintenance Account.* Not later than the 15th of each month out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance, and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by Borrower in trust for the Government as security therefor.

8. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Borrower in trust as security for the loan obligations. Transfers at a rate not less than $————[1] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $————[2] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of Borrower, consist of an amount, referred to as the "prepayment reserve," by which Borrower is "ahead of schedule" as defined in the regulations of the Farmers Home Administration. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by Borrower, provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8(a) to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8(a) and is not agreed between the borrower and the Government to be used for purposes authorized in subsection 8(a) shall be applied promptly on the loan obligations.

9. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that his income will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to his financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or Borrower's financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as labor housing and related facilities for domestic farm laborers.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit the transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(e) Submit the following to the Government for prior review and approval not less than ————days before the effective dates.

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements for occupancy and compensation to employees chargeable as operating expenses of the housing.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing or with any of Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing of Loan.* If at any time it appears to the Government that Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

[2] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to Borrower as aforesaid. If Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant hereto, such failure shall constitute default as fully as default in payment of amounts due on the loan. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Upon request by the Government the Borrower will permit representatives of the Government to inspect and make copies of any of the records of the Borrower pertaining to this loan. Such inspection and copying may be made during regular office hours of the Borrower, or any other time the Borrower and the Government finds convenient.

(e) Any provisions of this agreement may be waived by the Government, or changed by agreement between the Government and Borrower to any extent such provisions could legally have been foregone, or agreed to in any amended form, by the Government initially. Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of (date of this agreement)————19———."

Witness ————————————

Borrower ————————————

Witness ————————————

Borrower ————————————

Exhibit E

(Labor Housing Loan and Grant to a Nonprofit Corporation)

Loan and Grant Resolution of ————, 19—— Resolution of the Board of Directors of ————providing for obtaining financial assistance in the amount $————to aid in financing federally defined low-rent housing and related facilities for low-income domestic farm labor, and related matters. Whereas

————————————

(herein referred to as the "Corporation") is organized and operating under and the board of (authorizing State statute)

————————————

directors of the Corporation has determined that—

(a) The Corporation should provide low-rent housing and related facilities for low-income domestic farm labor, as defined in title V of the Housing Act of 1949.

(b) The estimated total cash development cost of such housing and facilities amounts to $————.

(c) For such purpose the Corporation is able to furnish from its own resources $————.

(d) The Corporation will need financial assistance in the amount of $———— which the Corporation is unable to obtain from other sources for such purpose upon terms and conditions which the Corporation could reasonably be expected to fulfill.

(e) Of such amount of needed financial assistance the Corporation will be able to repay, with interest at 1% per annum, the amount of $————over a repayment period of————years, if the balance of $————is made available to the Corporation as a grant.

(f) The housing and related facilities will fulfill a pressing need in the area in which they are or will be located.

(g) The housing and facilities cannot be provided without the aid of a grant in the amount stated above:

Therefore Be It Resolved:

1 *Application for Loan and Grant.* The Corporation shall apply to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (herein called "the Government") for a loan of $————and a grant of $————, pursuant to Title V of the Housing Act of 1949. Such loan may be insured by the Government. The loan and the grant shall be used only for the specific eligible purposes approved by the Government, in order to provide low-rent housing and related facilities for low-income domestic farm labor. Such housing and facilities and the land constituting the site may be referred to herein as the "housing."

2 *Execution of Loan and Grant Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the Note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of————years, bearing interest at a rate not to exceed——percent per annum, and containing other terms and conditions prescribed by the Government. To evidence the obligations of the grant, the Corporation shall execute an instrument in the form attached hereto entitled "Labor Housing Grant Agreement" and referred to herein as the "Grant Agreement," evidencing terms and conditions upon which the grant is made by the Government and the obligations of the Corporation with respect thereto. To secure the note and/or all other obligations and agreements of the Corporation with respect to the loan and the grant, as required by the Government, the President and the Secretary are hereby authorized to execute a security instrument giving a lien upon or security interest in the housing and such other property as the Government shall require, including an assignment of or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation. The President and the Secretary are further authorized to execute any other security and other instruments, agreements, and documents required by the Government for the loan or grant. The indebtedness and other obligations of the Corporation under the note, Grant Agreement, this resolution, the security instrument, and any other instruments and agreements related to the loan or grant are herein called the "loan and grant obligations."

3 *Equal Employment Opportunity under Construction Contracts and Nondiscrimination in the Use of Occupancy and Housing and in Any Other Benefits of the Loan or Grant.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements required by the Government regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1, "Equal Opportunity Agreement," involving an Equal Opportunity Clause to be incorporated in or attached as a rider to each construction contract which exceeds $10,000 in amount and is paid for in whole or in part with loan or grant funds, and (c) Farmers Home Administration Form FmHA 400-4, "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof.

4 *Supervised Bank Account.* The proceeds of the loan and grant and the amount of $———— to be contributed by the Corporation from its own funds and used for approved eligible purposes shall be deposited in a "supervised bank account" as required by the Government.[1] Amounts in the supervised bank account exceeding $40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan and grant obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ———— of the Corporation and countersigned by the County Supervisor or other authorized official of the Farmers Home Administration, and only for the specific eligible purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors of their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan or grant funds are paid in full, any balance remaining in the supervised bank account shall be treated as a refund of loan and grant funds in the same ratio as that between the amounts of the loan and grant, and the supervised bank account shall be closed.

5 *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan or grant obligations continue: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company

[1] Only loan or grant funds, and borrower's funds to be used for an eligible loan or grant purpose, may be deposited in the supervised bank account.

approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6 *General Fund Account.* By the time the loan and grant are closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $————. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

7 *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan and, unless the Government gives prior written consent, are not income or revenue from the housing.

8 *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations while they continue and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

9 *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan and grant obligations. Transfers at a rate not less than $————[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $————[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the "prepayment reserve," by which the Corporation is "ahead of schedule" as defined in the regulations of the Farmers Home Administration. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection (b) shall be applied promptly on the loan obligations.

10 *Regulatory Covenants.* So long as the loan or grant obligations continue, the Corporation shall—

(a) Impose and collect such fees, assessments rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts to cover handling and disposition of income from the payment of exenses attributable to the housing or to any other property securing the loan or grant obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs, including any information required by the Government regarding income of the occupants of the housing.

(d) Unless the Government gives prior consent—

(1) Not use or permit use of the housing for any purpose other than as low-rent housing and related facilities for low-income domestic farm labor, as those terms are defined by the Government.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan or grant obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor transfer or encumber title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or other conveyance or encumbrance, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in Section 7.

(e) Submit the following to the Government for prior review not less then ———— days before the effective dates:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements for occupancy of the housing.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under this resolution, the note, Grant Agreement, security instrument, and any related agreement executed by the Corporation in connection with the loan or grant.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan and grant obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan or grant obligations, or the security.

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as the total amount of the Reserve Account.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan and grant.

11 *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 *General Provisions.* (a) It is understood and agreed by the Corporation that any loan or grant will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan and grant, enforce such limitations, and protect the Government's financial interest in the loan and grant and the security.

(b) The provisions of this resolution are representations of the Corporation to induce the Government to make or insure a loan or make a grant to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any of its loan or grant obligations, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of default, the Government at its option may declare the entire amount of the loan and grant obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the corporation will permit representatives of the Government to inspect and make copies of any of the records of the corporation pertaining to the financial assistance. Such inspection and copying may be made during regular office hours of the corporation, or any other time the corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and elsewhere as the "Loan and Grant Resolution of (date of this resolution) ———— 19——."

Certificate

The undersigned, ————, the Secretary of the corporation identified in the foregoing resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ———— 19——, which has not been altered, amended, or repealed.

Date ————

Secretary ————

[SEAL]

Exhibit F—Labor Housing Grant Agreement

THIS AGREEMENT dated ————, 19——, between ————

————

which is organized and operating under

————

———— (Authorizing statute) herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

Whereas Grantee has determined to undertake a project of acquisition, construction, enlargement and/or capital improvement of a Labor Housing Project to serve domestic farm laborers at an estimated cost of $———— and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $———— of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable rental rate.

Said sum of $———— has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $———— subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

Now therefore, in consideration of said grant by Grantor to Grantee, to be made pursuant to Section 516 of the Housing Act of 1949 for the purpose only of defraying a part not to exceed —— percent of the development costs, as defined by applicable Farmers Home Administration instructions.

Grantee agrees that Grantee will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the project, including these units if less than the whole of said project, continuously in an efficient and economic manner.

D. Make the services of said project available within its capacity to all domestic farm laborers in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable rental rates, whether for one or more types of units, adopted by resolution date ———— 19——, as may be modified from time to time by Grantee. The initial rental rates must be approved by Grantor. Thereafter, Grantee may not make modifications to the rental rate structure without prior authorization from the Grantor.

E. Adjusts its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

G. To execute Form FmHA 400–1, "Equal Opportunity Agreement," and to execute Form FmHA 400–4, "Nondiscrimination Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

H. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The Provisions of this Grant agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grantee Agreements or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

I. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

J. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its sucessor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions.

(a) The Grantee may be permitted to retain title after it compensates the Federal

Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

K. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the FmHA.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than $1000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of $1000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

L. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

N. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

O. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

P. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

Q. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item J above.

R. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick

Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

S. Pay all laborers and mechanics employed by contractors and subcontractors wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

T. In construction contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

U. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 1875C–9) and Section 308 of the Water Pollution Control Act specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As condition for the award of contract to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this Agreement not to exceed $———— which it will advance to Grantee to meet not to exceed ——— percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of this agreement

This agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

———————————

and attested and its corporated seal affixed by its duly authorized

———————————

ATTEST:

By ———————————

(Title)

By ———————————

(Title)

United States of America, Farmers Home Administration

By ———————————

(Title)

Exhibit G—Legal Service Agreement

Agreement made this ———— day of ————, 19——

between the ————, hereinafter called the owners, and ————, hereinafter called the attorney, witnesseth:

Whereas the owners intent to form a corporation, hereinafter called the corporation, to construct and operate a labor housing project in

Town ————

County ————

State ————

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1 Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2 Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation and adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3 Review of construction contract, bid-letting procedure, and surety and performance bonds.

4 Examination of real estate titles and preparation, review, and recording of deeds and any other instruments.

5 Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6 Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7 Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

————————————

————————————

The fees to be payable in the following manner and at the following times:

————————————

————————————

The attorney states and agrees that of the above total fees, ———— represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within ——— days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ———— day of ————, 19——.

Attorney: ————

Owners: ————

————————————

————————————

————————————

Exhibit H—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

This Exhibit includes information for use by public body applicants in the preparation and issuance of evidences of debt ("bonds" or "debt instruments"). This information is made available to applicants as appropriate

for application processing and loan docket preparation.

(1) *Policies.* (i) This Exhibit outlines the policies of the Farmers Home Administration (FmHA) with respect to preparation and issuance of evidences of debt (hereinafter sometimes referred to as "bonds" or "debt instruments").

(ii) Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized Bond Counsel with respect to the validity of a bond issue. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized Bond Counsel firm which has had experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(iii) At the option of the applicant for issues of $250,000 or less, Bond Counsel may be used for the issuance of a final opinion only and not for the preparation of the other documents and of the bond docket when the applicant, FmHA, and Bond Counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(iv) At the option of the applicant and with the prior approval from the National Office of FmHA, for issues of $50,000 or less, the applicant need not use Bond Counsel if:

(A) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(B) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what Bond Counsel would charge as compared with what the local attorney will charge without Bond Counsel.

(C) The local attorney is able and experienced in handling this type of legal work.

(D) The applicant understands that, if it is required by FmHA to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a Bond Counsel's opinion at that time.

(E) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to accepted methods of preparation of similar bonds in the area.

(F) Many matters necessary to comply with FmHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions in addition to any requirements of Bond Counsel will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA.

(2) *Bond transcript documents.* Any questions with respect to FmHA requirements should be discussed with local FmHA representatives. Bond Counsel is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

(i) Copies of all organizational documents.

(ii) Copies of general incumbency certificate.

(iii) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(iv) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(v) Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(vi) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(vii) Specimen bond, with any attached coupons.

(viii) Attorney's no-litigation certificate.

(ix) Certified copies of resolutions or other documents pertaining to the bond award.

(x) Any additional or supporting documents required by Bond Counsel.

(xi) For loans involving multiple advances of FmHA loan funds, a preliminary approving opinion of Bond Counsel if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(xii) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized Bond Counsel including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation.

(3) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds.

(4) *Permanent instruments for FmHA loans to repay interim commercial financing.* Such loans will be evidenced by one of the types of instruments in the order of preference shown in paragraph (a)(5) of this Exhibit.

(5) *Multiple advances of FmHA funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods. FmHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(i) *First preference—Form FmHA 440–22.* If legally permissible, use Form FmHA 440–22, "Promissory Note Association or Organization," for insured loans.

(ii) *Second preference—single instruments with amortized installments.* If Form FmHA 440–22 is not legally permissible, use a single instrument showing on the face the full amount of the loan and providing for amortized installments with provision for entering the date and amount of each FmHA advance on the reverse thereof or on an attachment to the instrument. Form FmHA 440–22 should be followed to the extent possible. Where interest-only payments are scheduled for the first installment due dates, no attempt should be made to compute in dollar terms the amount of interest due on such dates. Rather the instrument should provide that "interest only" is due on these dates. Thereafter, regular amortized installments of a specified dollar amount will be due on each installment date.

(iii) *Third preference—single instrument with installments of principal plus interest.* If a single amortized installment instrument is not legally permissible, use a single instrument providing for specified installments of principal plus accrued interest. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(A) The repayment terms described in paragraph (a)(5)(ii) of this Exhibit "Second preference" apply.

(B) The instruments shall contain in substance the following provisions:

(*1*) A statement of principal maturities and due dates.

(*2*) Payments made on indebtedness evidenced by this instrument, regardless of when made, shall be applied first to interest due through the date of payment and next to principal except that payments made from security depleting sources shall, after payment of interest to the payment date, be applied to the principal last to become due under the instrument and shall not affect the obligation of the borrower to pay the remaining installments as scheduled.

(iv) *Fourth preference.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (7) of this Exhibit. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (5)(iii) of this Exhibit.

(6) *Multiple advances of FmHA funds using temporary debt instrument.* When none of the instruments described in paragraph (5) of this exhibit are legally permissable or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance

of FmHA loan funds and will be for the full amount of the FmHA loan. The instrument will be prepared by Bond Counsel and approved by the State Director and OGC. At the same time FmHA delivers the last advance, the borrower will deliver the permanent bond instrument to FmHA to replace the temporary debt instrument and the canceled temporary instrument will be delivered to the borrower. The approved debt instrument will show at least the following:

(i) The date from which each advance will bear interest.

(ii) The interest rate.

(iii) A payment schedule providing for interest on outstanding principal at least annually.

(iv) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(7) *Minimum bond specifications.* The provisions of paragraph (7) are of this Exhibit minimum specifications only, and must be followed to the extent legally permissible.

(i) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or Serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for either repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by statute.

(ii) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the FmHA Finance office.

(iii) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(iv) *Date of bonds.* Bonds will be dated as of the day of delivery.

(v) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixty or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month. Borrowers scheduled to make monthly payments will be given a monthly payment card jacket at the time of loan closing. These borrowers will submit payment directly to the Finance Office.

(vi) *Place of payment.* Payments on bonds purchased by FmHA should be submitted to the FmHA Finance Office by the borrower.

(vii) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (5) of this Exhibit.

(viii) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued without restriction.

(ix) *Scheduling of FmHA payments when joint financing is involved.* In all cases in which FmHA is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA payments of principal and interest should approximate amortized installments.

(x) *Precautions.* The following types of provisions in debt instruments should be avoided.

(A) Provisions for the holder to manually post each payment to the instrument.

(B) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA, may post the date and amount of each advance or repayment on the instrument.

(8) *Bidding by FmHA.* Where a public bond sale is required by State statutes, FmHA will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably FmHA will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where FmHA is required to bid, the bid will be made at the applicable FmHA interest rate.

Exhibit I—Guide Letter for Use in Informing Interim Lender of FmHA's Commitment

Name and Address of Private Lender———

———

———

Dear———:

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications, and all other contracts documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request."

The applicant has been required by FmHA to deposit $———with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved contract documents, drawings and specifications (except for minor punch list items), and the applicant provides evidence indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,]* drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA loan applicant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. It is a general practice for FmHA to make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

_____,

State Director,

This regulation has been submitted to OMB for review of any recordkeeping and reporting requirements. This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A final Impact Statement has been prepared and is available from the office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy of 1969, Pub. L. 91-190, and Environmental Impact Statement is not required.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: September 19, 1979.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 79-31579 Filed 10-12-79; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

Rules Regarding Delegation of Authority; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule: Correction.

SUMMARY: This notice corrects a previous Federal Register document (FR Doc. 79-30335) beginning at page 56313 of the issue for Monday, October 1, 1979.

EFFECTIVE DATE: September 21, 1979.

FOR FURTHER INFORMATION CONTACT: Michael E. Bleier, Senior Counsel (202/452-3721), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In the center column of page 56314, the 9th line from the bottom of paragraph "(2)" should read "approve under subparagraph (22) of ". In paragraph "2." the deletions and renumberings under § 265.2(f) are corrected, and the numbering of amended subparagraph 265.2(f) is corrected to read "265.2(f)(22)". The corrected deletions and renumberings are set forth below.

2. In order to accomplish this delegation, § 265.2(c) is amended by deleting subparagraph 16 and renumbering subparagraphs (17), (18), (19), (20), (21), (22), (23), (24), and (25) as subparagraphs (16), (17), (18), (19), (20), (21), (22), (23), and (24). Section 265.2(f) is amended by deleting subparagraphs (23), (24), (28), (29), (30), (31), (32), (33), and (52), and footnotes (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) and renumbering subparagraphs (25), (26), (27), (34), (35), (36), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (53), (54), (55) and (56) as subparagraphs (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46) and (47), respectively, and amending subparagraph (22) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(f) Each Federal Reserve Bank is authorized as to member banks or other indicated organizations headquartered in its district:

* * * * *

(22) Under the provisions of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), sections 3(a) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a) and 1843(c)(8)) and §§ 225.3 (b) and (c), and §§ 225.4 (a) and (b) of Regulation Y (12 CFR 225.3 (b) and (c), and 225.4 (a) and (b)), to approve applications requiring prior approval of the Board, and under the provisions of section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(4)), to furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies, unless one or more of the following conditions is present:

Board of Governors of the Federal Reserve System, October 4, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-31716 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

15 CFR Parts 370, 371, 374, 377

Change in Export Control Status of the Panama Canal Zone; Interim Rule

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Interim Rule and request for comments.

SUMMARY: On October 1, 1979, the United States Government relinquished jurisdiction of the Panama Canal Zone to the Republic of Panama. This rule amends the Export Administration Regulations to reflect the revised status of the Canal Zone. In addition, this rule establishes a procedure whereby shippers of certain refined petroleum products to the former Canal Zone may qualify to continue making such shipments to the Republic of Panama, and it establishes a new general license

to facilitate petroleum exports to the Panama Canal Commission.

DATES: Effective date: October 1, 1979; comments by December 14, 1979.

ADDRESS: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Post Office Box 7138, Ben Franklin Station, Washington D.C. 20044.

FOR FURTHER INFORMATION CONTACT: For general information: Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. (202) 377–4738)

For information on petroleum shipments: Mr. Robert F. Kan, Short Supply Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. (202) 377–3795)

SUPPLEMENTARY INFORMATION: Under the Panama Canal Treaty of 1977, the territory of the former Panama Canal Zone became subject to the jurisdiction of the Republic of Panama on October 1, 1979. The Canal Zone Government accordingly ceased operations as of that date. As of October 1, the Panama Canal Commission, an agency of the U.S. Government, has responsibility for operating the Canal. Prior to October 1, the Canal Zone was considered a part of the United States for export control purposes. As a result of the area's change in status, the *Export Administration Regulations* are amended to delete the Panama Canal Zone from the definition of the term "United States." Effective October 1, 1979, shipments from the United States to the former Panama Canal Zone, including reexports of commodities and technical data in, or enroute to, the Canal Zone on October 1, 1979, will be subject to the rules and regulations applying to exports to and reexports from the Republic of Panama. Most non-petroleum shipments for the use of the Panama Canal Commission may be made under the provisions of General License *GUS* (Shipments to personnel and agencies of the U.S. Government). A new General License *GPCC* is established to permit exports of refined petroleum energy products to the Panama Canal Commission. Other shipments of refined petroleum products to the former Canal Zone are made subject to validated licensing restrictions, unless they qualify for export under General License *G–NNR, GLV, SHIP STORES, PLANE STORES, RCS* or *G–FTZ.*

Exports of Petroleum

Part 377 of the Export Administration Regulations sets forth the restrictions applicable to the export of crude petroleum and certain refined petroleum products. Because of the change in the status of the former Canal Zone, shipments to that part of the Republic of Panama comprising the former Canal Zone are now considered exports to Panama and are subject to all applicable provisions of Part 377 of these Regulations.

In brief, these provisions are as follows: With certain limited exceptions, exports of crude oil are prohibited. Exports of the petroleum products listed in Supplement No. 2 to Part 377 are subject to validated licensing controls and, in most instances, to quota restrictions. Certain categories of petroleum product shipments are permitted to be made under general license (*G–NNR, GLV, SHIP STORES, PLANE STORES, RCS* or *G–FTZ*). All these provisions now apply to shipments to the former Canal Zone. However, because of the transfer of the Canal Zone to the Republic of Panama and the Panama Canal Commission's responsibility to operate the Canal, two new provisions are being adopted in these Regulations:

(1) In order to insure that the Panama Canal Commission can obtain, without restriction, petroleum products which it needs for the conduct of canal operations, a new general license (General License *GPCC*), is established, and

(2) A procedure is established to permit historical exporters of petroleum products to the former Canal Zone to apply for participation in the allocation of export quotas for the Republic of Panama.

The quota system which is applicable to Panama as well as other destinations was established in early 1974 based on historical exports to various destinations during a representative base period. In order that the quotas established for the Republic of Panama at that time may now be revised to reflect shipments heretofore made to the Canal Zone, these Regulations are amended to permit exporters to apply for new or revised quota allocations to Panama based on their historical trade with the Canal Zone during a recent base period as set forth below.

Exporters who wish to participate in quota allocations for the Republic of Panama based on their shipments to the former Canal Zone should file Past Participation Statements as provided in § 377.2(c). Shipments made during the applicable base period to the Panama Canal Company should be shown on a Past Participation Statement clearly marked "Shipments to the Panama Canal Company." Shipments made to other entities in the former Canal Zone should be shown on a separate Past Participation Statement. In establishing and allocating quotas based on such Past Participation Statements, the Office of Export Administration will seek to exclude from consideration those quantities of refined petroleum products used by the former Panama Canal Company in the performance of functions which will continue to be performed by the Panama Canal Commission. Since the Panama Canal Commission will henceforth be receiving such quantities of refined petroleum products as it needs outside the quota system via General License *GPCC*, it would be inappropriate to include for quota establishment or allocation purposes those shipments to the former Panama Canal Company which were used by the latter in the performance of functions which the Panama Canal Commission will continue to perform. In determining the quantities of such shipments to be excluded from an exporter's historical base, the Office of Export Administration will consult with the Panama Canal Commission. For the fourth quarter of 1979 only, the deadline established in Supplement No. 2 to Part 377 for the receipt of Past Participation Statements and applications for licenses to export petroleum products to the Republic of Panama is extended to close of business on December 21, 1979.

Applicants for licenses to export petroleum products subject to export quotas to Panama before they have been allocated quotas should submit Past Participation Statements at the same time that they file their first license applications. Such applications will be considered in the light of the exporters' Past Participation Statements and; if approved, will be charged against such quotas as may subsequently be allocated to the exporter. Exporters filing Past Participation Statements should possess documentation such as bills of lading and/or waybills, commercial invoices, letters of credit, dock receipts, loading tickets, etc., substantiating the exports they claim and identifying the consignees. After reviewing individual Past Participation Statements, the Office of Export Administration will determine on a case-by-case basis whether to request submission of such documentation for audit.

Saving Clause

Shipments of commodities, excluding shipments of crude oil, to the former

Panama Canal Zone that require a validated export license as a result of these changes, but which were on dock for lading, on lighter, laden aboard an exporting carrier, or in transit to a port of export pursuant to actual orders for export prior to 12:01 a.m., October 1, 1979, may be exported under General License *G–DEST* and, for petroleum products, General Licenses *G–NNR, GLV, SHIP STORES, PLANE STORES, RCS* or *GPCC* up to and including October 21, 1979. Any such shipment not laden aboard the exporting carrier on or before October 21, 1979, requires a validated license for export.

Invitation for Public Comment

These regulations are effective as of October 1, 1979. Although the regulations are exempt from the public participation in rulemaking procedures of the Administrative Procedure Act, they are being issued in interim form to permit interested persons the opportunity to submit comments before these rules are adopted in final form. Interested persons are invited to submit written comments to Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Post Office Box 7138, Ben Franklin Station, Washington, D.C. 20044. All comments received by the Department prior to noon, December 14, 1979, will be considered in issuing these regulations in final form.

It has been determined that this regulatory revision is "not significant" within the meaning of Department of Commerce Administrative Order 218–7 (44 FR 2082 *et seq.*, January 9, 1979) and Industry and Trade Administration Administrative Instruction 1–6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "Improving Government Regulations."

Accordingly, the *Export Administration Regulations* (15 CFR Part 368 *et seq.*) are amended to read as follows:

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

1. Section 370.2 is amended to read as follows:

§ 370.2 Definitions of terms.

The following are definitions of terms as used in the *Export Administration Regulations:*

* * * * *

United States. Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to Section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A–81U, and also including the outer continental shelf, as defined in Section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

* * * * *

2. Section 370.4 is amended to read as follows:

§ 370.4 Shipments to territories, dependencies, and possessions of the United States, and to Trust Territories.

No license is required for shipments from the United States to Puerto Rico, or any territory, dependency, or possession of the United States as listed in *Schedule C–E, Classification of Country and Territory Designations for U.S. Export Statistics,* issued by the Bureau of the Census. Nor is a license required for shipments to the Trust Territory of the Pacific Islands; *i.e.*, the Caroline Islands, the Marshall Islands, and the Northern Mariana Islands (except Guam, which is an island possession of the United States).

PART 371—GENERAL LICENSES

3. A new § 371.8 is established to read as follows:

§ 371.8 General License GPCC: Export of Petroleum Products to the Panama Canal Commission.

(a) *Scope.* A general license designated *GPCC* is established subject to the provisions of this § 371.8 authorizing the export to the Panama Canal Commission of refined petroleum products listed in Supplement No. 2 to Part 377 of this chapter.

(b) *Restrictions on Exports.* Crude petroleum may not be exported under this general license; and no export of any petroleum product listed in Supplement No. 3 to Part 377 hereof of this chapter may be made under this general license unless the exporter, prior to the export of such commodity, has assembled documentary evidence establishing that the commodity was not produced or derived from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 377.6(e)(1)(iv) of this chapter, or it may consist of other documentation establishing the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 387.11(e) of this chapter, and is put on notice that the Office of Export Administration will, in appropriate cases, conduct audits of exporters' files to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 3 to Part 377 that was made under a Shipper's Export Declaration showing General License *GPCC* as the authority for the export. Crude petroleum may only be exported under a validated license issued pursuant to § 377.6(d)(1) of this chapter; any other petroleum commodity listed in Supplement No. 3 to Part 377 of this chapter which does not meet the conditions for export under General License *GPCC* may be exported only under a validated license issued pursuant to § 377.6(d)(6) of this chapter.

(c) *Quarterly Reports.* As a condition for the use of General Licence *GPCC,* an exporter shall file a report with the Office of Export Administration within 21 days following the end of each calendar quarter during which an export is made under General License *GPCC.* This report shall be in affidavit format, be signed by an authorized representative of the exporter, and shall list separately by each petroleum commodity group listed in Supplement No. 2 to Part 377 of this chapter each shipment made to the Panama Canal Commission during the preceding calendar quarter, the date of such shipment and the totals by individual commodity and for petroleum commodities as a whole. In addition, if the exporter has reason to believe or subsequently learns that any commodities exported under General License *GPCC* have been or are likely to be used for any purpose other then consumption by the Panama Canal Commission the exporter shall immediately advise the Office of Export Administration of the particular circumstances.

PART 374—REEXPORTS

§§ 374.1 and 374.2 [Amended]

4. Footnotes 1, 2, 3, and 4 to § 374.2 are renumbered 2, 3, 4, and 5 respectively, and a new footnote 1 is added to the introductory paragraph of § 374.1, following the phrase "commodity previously exported from the United States", to read as follows:

[1] The term "previously exported" encompasses not only commodities physically transported from U.S. territory, but also commodities removed from U.S. jurisdiction through legal transfer of authority over an area, e.g., the transfer of the Panama Canal Zone from the United States to the Republic of Panama on October 1, 1979.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

5. The table entitled Base Periods in Supplement No. 2 to Part 377 is revised to read as follows:

Base Periods

1. For that part of the Republic of Panama which, prior to October 1, 1979, was the Panama Canal Zone:

Commodity Groups B, C, D, E, F, G, and N–1: January 1, 1977 through June 30, 1979.

Commodity Groups K, L, and M: The Corresponding calendar quarter during the period April 1, 1978 through March 31, 1979.

2. For all other areas including other parts of the Republic of Panama: Commodity Groups B, C, D, E, F, and G: January 1, 1971 though June 30, 1973.

Commodity Groups K, L, and M: The corresponding calendar quarter during the period April 1, 1972, through March 31, 1973.

Commodity Group N–1: January 1, 1974 through June 30, 1976.

(Sec. 21, Pub. L. (98–72); sec. 4, Pub. L. 91–184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212); E.O. 11912, 41 FR 15825, 3 CFR 1969 Comp.; 10 U.S.C. 7430; Department Organization Order 10–3, dated December 4, 1977, 42 FR 64721 (1977), as amended; and Industry and Trade Administration Organization and Function Order 45–1, dated December 4, 1977, 42 FR 64716 (1977), as amended).

Robin B. Schwartzman,

Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 79-31726 Filed 10-10-79; 2:53 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 273, 274

[Docket No. RM79-62]

Collection Authority; Refunds; Determinations by Jurisdictional Agencies; Denial of Rehearing and Clarification of Regulations

Issued September 28, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Denial of rehearing and clarification of regulations.

SUMMARY: The Commission has issued an order denying a Petition for Rehearing of Order No. 41, which issued Final Regulations for Subparts A, C, D, and E of Part 274 and amended § 275.202 of the Commission's regulations under the Natural Gas Policy Act of 1978. The order addresses the three issues raised in the Petition and makes certain clarifications with respect to these issues.

EFFECTIVE DATE: September 28, 1979.

FOR FURTHER INFORMATION CONTACT: Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4001, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275–5928.

SUPPLEMENTARY INFORMATION: Clarification of Final Regulations Under the Natural Gas Policy Act of 1978. Order No. 41, Order Denying Rehearing and Clarifying Order, Docket No. RM79–62.

I. Background

On August 1, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 41 in Docket No. RM79–62. An application for rehearing of that order was filed on August 31, 1979, by Tenneco Oil Company, Pennzoil Company, Texas Gulf Inc., and General American Oil Company of Texas (Applicants), pursuant to 18 CFR § 286.102.

Order No. 41 issued Final Regulations for Subparts A, C, D, and E of Part 274 and amended § 275.202 of the Commission's regulations under the Natural Gas Policy Act of 1978 (NGPA). Part 274 concerns initial determinations by jurisdictional agencies that a well is eligible for a particular maximum lawful price established by the NGPA. Section 275.202 concerns Commission review of jurisdictional agency determinations.

Applicants specify three errors arising out of Order No. 41. None of these specifications present the Commission with sufficient cause to modify the regulations promulgated in Order No. 41, but we will address each of these issues for purposes of clarification.

II. Specifications of Error

A. Section 275.202(b). Under section 503(b) of the NGPA, the Commission is granted authority to review and reverse jurisdictional agency determinations. Section 275.202(b) of the regulations provides that the 45-day review period established in section 503(b) shall be tolled in the case of an incomplete notice, i.e., a notice which "does not contain all the material information required in § 274.104(a) (4), (5), (6)." Applicants assert that the Commission does not have authority to toll the 45-day review period and that this regulation constitutes a violation of section 503(b) of the NGPA. They argue that if a notice of determination contains information insufficient to constitute substantial evidence, the Commission should reverse the determination rather than toll the review period. This issue was raised and discussed by the Commission in Order No. 34 (Final Part 275 Regulations under the Natural Gas Policy Act of 1978, Docket No. RM79–3, issued June 14, 1979) and in the Order on Rehearing of Order No. 34 (issued August 13, 1979). In the latter order the Commission stated its basis for concluding that the tolling provision is within the scope of the Commission's authority to prescribe regulations under the NGPA. Section 503(a)(2) authorizes the Commission to require, by rule, that notices of determination "include such substantiation and be in such manner as the Commission may, by rule, require." Section 501(a) permits the Commission to "prescribe such rules and orders as may be necessary or appropriate to carry out its functions under this Act." Under section 501, the Commission could treat a jurisdictional agency notice of determination that did not comply with these substantiation requirements as a nullity. Instead, however, the Commission has adopted a less drastic remedy: it has provided for tolling of the 45-day review period to permit a jurisdictional agency to perfect an incomplete notice.

The Commission stresses that when a notice of determination is found to be incomplete, and the review period is tolled, the applicant's right to make interim collections under § 273.203(b) is not affected. Interim collections may continue throughout the period during which the jurisdictional agency is supplementing or correcting the notice. If the agency fails to supplement or correct the notice within a reasonable time, the Commission may find it appropriate to issue a Preliminary Finding on the determination, based on the incomplete filing.

The Commission believes that once jurisdictional agencies have become familiar with the determination process, we will seldom find it necessary to utilize the tolling provision for incomplete notices. In the interim, however, we believe that jurisdictional agencies should be given an opportunity to correct deficiencies in their notices.

B. Section 274.104(a)(6). Section 274.104(a)(6) provides that a notice of determination shall include "an explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice." Applicants request that this section be clarified to assure jurisdictional agencies that no more than a short, succinct statement is required under this regulation.

The Commission notes that a brief, one-paragraph statement from the jurisdictional agency will generally be sufficient to satisfy the requirement of § 274.104(a)(6). Such statement should provide any factual finding or findings upon which the determination is based. For example, if the notice states that a well qualifies as a stripper well, under section 108 of the NGPA, the explanatory statement should state that the well produced nonassociated natural gas at an average rate of 60 Mcf or less per production day during the 90-day production period, and should stipulate the basis for this finding, e.g., production records, tax records, etc. The statement should also state that the well produced at its maximum efficient rate of flow (MER) and should stipulate the basis upon which MER was determined, e.g., flow test, 12-month records, etc. It is envisioned that such a statement can be made briefly, in most cases in one paragraph.

If the determination is based on information not included with the notice of determination, the agency should provide an explanatory statement which references those records or other data containing their relevant information. Again, it is expected that such an explanation would be quite brief.

The Commission wishes to clarify that § 274.104(a)(6) does not require the submission of a written opinion justifying the determination. The regulation is designed only to enable the Commission to determine the factual basis underlying the agency's decision. A brief explanation of this factual basis should be sufficient to enable the Commission to determine whether the jurisdictional agency's determination is supported by substantial evidence.

C. Section 274.401(b). Section 274.401(b) was promulgated pursuant to section 501(c) of the NGPA. It permits delegation of the Commission's authority to receive certain reports filed by intrastate pipelines to a state agency with jurisdiction over the rates and charges of the reporting intrastate pipelines.

Applicants suggest that the authority to receive these reports, if delegated, should be delegated to the jurisdictional agency, not to the state agency which regulates intrastate pipelines. Applicants express concern over the fact that in some states such delegation will result in two separate agencies having administrative responsibilities under the NGPA.

The Commission notes that this issue was specifically addressed in Order No. 41. The application for rehearing offers no additional argument which would lead us to alter the regulation. As stated previously, we believe that intrastate pipeline filings made under Part 276 of the regulations should be directed to the state agency which regulates intrastate pipelines in order that it may exercise its expertise in this area. We note, however, that if such state agency is not also the jurisdictional agency for purposes of making NGPA determinations, the two agencies may wish to coordinate their efforts to ensure that each agency needing information will have access to it. This is a matter which is best resolved within any state in which two separate agencies regulate natural gas production and natural gas pipelines.

The Commission orders: The application for rehearing of Order No. 41 is denied, and Order No. 41 is clarified as set forth above.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-31715 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FRL 1337-7; FAP 9H5199/T46]

Experimental Use of Herbicide Oxyfluorfen in Cottonseed Oil

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation related to the experimental use of the herbicide oxyfluorfen in cottonseed oil. The regulation was requested by Rohm and Haas Co. This rule will permit the marketing of cottonseed oil while further data is collected on the subject pesticide.

EFFECTIVE DATE: Effective on October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Richard F. Mountfort, Acting Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/755-2196).

SUPPLEMENTARY INFORMATION: On November 15, 1978, the EPA announced (43 FR 53057) that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had filed a food additive petition (FAP 9H5199). This petition proposed that 21 CFR 193 be amended by the establishment of a regulation permitting residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene) and its metabolites containing the diphenyl ether linkage in cottonseed oil resulting from application of the herbicide to growing cotton in a proposed experimental program with a tolerance limitation of 0.2 part per million (ppm) in accordance with an experimental use permit that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). No comments were received by the Agency in response to this notice of filing.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being issued concurrently under FIFRA. It has further been determined that since residues of the pesticide may result in cottonseed oil from the agricultural uses provided for in the experimental use permit, the food additive regulation should be established and should include a tolerance limitation.

The toxicological data considered in support of the proposed tolerance included a rat oral lethal dose (LD_{50}) study, a rabbit LD_{50} study, a rat inhalation LD_{50} study, a rabbit skin irritation study, mutagenicity testing (negative), a 20-month mouse feeding study with a no-observed-effect level (NOEL) of 2 ppm or 0.3 milligram (mg)/kilogram (kg) of body weight (bw)/day, and a three-generation rat reproduction study. The acceptable daily intake (ADI) is 0.003 mg/kg bw/day. The existing and proposed temporary tolerances will contribute 2.2 percent of the ADI, which was determined from the 20-month mouse feeding study using a 100-fold safety factor.

The metabolism of oxyfluorfen is adequately understood for the purpose of the proposed regulation, and an adequate analytical method (gas liquid chromatography using electron capture detection) is available for enforcement purposes. No regulatory actions are pending against registration of oxyfluorfen, nor are any other considerations involved in establishing the proposed regulation. (A related document establishing temporary tolerances for residues of oxyfluorfen in cottonseed; eggs; milk; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep appears elsewhere in today's Federal Register.) The temporary tolerances established in eggs; milk; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep will be adequate to

cover secondary residues as delineated in 40 CFR 180.6(a)(2).

The pesticide is considered useful for the purpose for which a tolerance is sought. Therefore, the regulation establishing a tolerance of 0.2 ppm in cottonseed oil by amending 21 CFR Part 193 is being promulgated as proposed. Accordingly, a food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before November 14, 1979, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on October 15, 1979, 21 CFR Part 193 is amended as set forth below:

Dated: September 20, 1979.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)))

James M. Conlon,

Associate Deputy Assistant Administrator for Pesticide Programs.

Part 193, Subpart A, is amended by establishing the new § 193.325 to read as follows:

§ 193.325 Oxyfluorfen.

(a) A tolerance of 0.2 part per million is established for combined residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene) and its metabolites containing the diphenyl ether linkage in cottonseed oil resulting from application of the herbicide in accordance with the provisions of an experimental use permit that expires October 1, 1981.

(b) Residues in cottonseed oil not in excess of 0.2 part per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the herbicide is legally applied during the term of and in accordance with provisions of the experimental use permit and food additive tolerance.

(c) Rohm and Haas Co. shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 79-31723 Filed 10-12-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

Administrative Settlement Costs—Contract Claims; State Highway Agency Audit Expense—Third Party Contract Costs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amendments to final rules.

SUMMARY: The Federal Highway Administration is issuing this document in order to clarify and condense existing regulations. This is in accordance with the recommendations of FHWA's Regulations Reduction Task Force (43 FR 10578). These subparts establish the criteria for eligibility of administrative settlement costs relating to contract claims and State highway agency audit expenses relating to third party contracts, respectively.

DATES: These amendments are effective November 14, 1979.

FOR FURTHER INFORMATION CONTACT: Howard Bander, Finance Division, Office of Fiscal Services, 202-426-0575; Virginia Cherwek, Attorney, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) is revising Chapter I of Title 23, CFR, Part 140, Subparts E and H.

The existing regulations under Subpart E were originally published at 39 FR 26411 on July 19, 1974, and codified material contained in Volume 1, Chapter 4, Section 2, Subsection 4 of the Federal-Aid Highway Program Manual.[1] This revision changes the title of the regulation from "Federal-Aid Projects; State Legal Expenses—Contract Claims" to read "Administrative Settlement costs—Contract Claims" and eliminates excess language in the rule.

The changes are not substantive and no change in the existing practice and procedure is intended. The certified statement previously specified in § 140.504(a) has not in practice been required by FHWA, and the submission of vouchers (§ 140.504(d)) is now covered in Subpart A. Accordingly, the revisions now simply provide for proper support.

Subpart H was originally published at 39 FR 28876 on August 12, 1974, and amended at 41 FR 10430 on March 11, 1976. It codified material contained in Volume 1, Chapter 4, Section 2, Subsection 3 of the Federal-Aid Highway Program Manual. Subpart H establishes the State highway agency's responsibility for the audit of third party contract costs and the reimbursement criteria for Federal participation in project-related third party contract audit expenses. This revision changes the title from "State Audit Expenses—Contract Costs" to read "State Highway Agency Audit Expense—Third Party Contract Costs." Also, the regulation revision condenses and clarifies existing policy and procedures.

Due to the editorial nature of the revisions being made and the fact that existing procedures are not affected by these revisions, the FHWA has determined that publication of these amendments for notice and comment could not reasonably be anticipated to result in the receipt of useful information. Accordingly, these amendments will be effective November 14, 1979.

Note.—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Howard Bander of the program office at the address specified above.

In consideration of the foregoing and under the authority of 23 U.S.C. sections 121, 315, and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b), Chapter I of Title 23, CFR, Part 140, Subparts E and H are revised to read as follows:

[1] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

PART 140—REIMBURSEMENT

* * * * *

Subpart E—Administrative Settlement Costs—Contract Claims

Sec.
140.501 Purpose.
140.503 Definition.
140.505 Reimbursable costs.

* * * * *

Subpart H—State Highway Agency Audit Expense—Third Party Contract Costs

Sec.
140.801 Purpose.
140.803 Policy.
140.805 Definitions.
140.807 Reimbursable costs.

Authority: 23 U.S.C. sections 121.315; 49 CFR 1.48(b); and OMB Circular A-102, Attachment G, Standard 2 (h) and (i).

Subpart E—Administrative Settlement Costs—Contract Claims

§ 140.501 Purpose.

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects performed by a State under Federal-aid procedures.

§ 140.503 Definition.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

§ 140.505 Reimbursable costs.

(a) Federal funds may participate in administrative settlement costs which are:

(1) Incurred after notice of claim,

(2) Properly supported,

(3) Directly allocable to a specific Federal-aid or Federal project,

(4) For employment of special counsel for review and defense of contract claims, when

(i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and

(ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and

(5) For travel and transportation expenses, if in accord with established policy and practices.

(b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by SHA officials with respect to the claim.

Subpart H—State Highway Agency Audit Expense—Third Party Contract Costs

§ 140.801 Purpose.

This regulation establishes (a) the State Highway Agency's (SHA) responsibility for the audit of third party contract costs as defined in § 140.805(b) and (b) the reimbursement criteria for Federal participation in project-related audit expenses.

§ 140.803 Policy.

Audits are to be performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal laws and regulations. The SHA may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment their audit force.

§ 140.805 Definitions.

(a) *Audit.* The review and analysis of cost data, accounting systems, estimating methods, supporting documentation, and other related matters by professional auditors. The depth and extent of audit will vary with the particular circumstances; however, sufficient, competent, and relevant evidence must be obtained to afford a reasonable basis for the auditor's opinions, judgment, conclusions, and recommendations.

(b) *Contract costs.* Project-related costs incurred by railroads; utilities; consultants; governmental instrumentalities; universities; non-profit organizations; construction contractors (force account work); and organizations engaged in right-of-way studies, planning, research or related activities where the terms of a proposal or contract (including lump sum) necessitate an audit. Construction contracts (except force account work) are not included in this group.

§ 140.807 Reimbursable costs.

(a) Federal funds may be used to reimburse an SHA for the following types of project-related third party contract audit costs:

(1) Salaries and wages paid to an SHA's personnel,

(2) Fringe benefits directly applicable to such reimbursable salaries and wages, and

(3) Travel and transportation expenses.

(b) Audit charges by licensed or certified public accounting firms are reimbursable provided that the audit contract has been approved by the Federal Highway Administration (FHWA) Division Administrator.

(c) Expenses incurred under interagency audit service arrangements with other Federal agencies are reimbursable.

Issued on: October 4, 1979.

John S. Hassell, Jr.,
Deputy Administrator.

[FR Doc. 79-31602 Filed 10-12-79; 8:45 am]
BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGD 78-140]

Drawbridge Operation Regulations; Hackensack River, N.J.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Bergen County, N.J., and the New York, Susquehanna, and Western Railroad Co., the Coast Guard is changing the regulations governing the Court Street bridge, mile 16.2, and the railroad bridge, mile 16.3, Hackensack River, to provide that the swing span of the Court Street bridge need not open unless advance notice is given from midnight to 8 a.m., and the swing span of the railroad bridge need not open for the passage of vessels. This change is being made because there have been an average of less than one opening per day of the Court Street bridge and the railroad bridge has not opened for the past 10 years. This action will, for the Court Street bridge, relieve the bridge owner of the burden of having a person constantly available to open the draw from midnight to 8 a.m., and for the railroad bridge, relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw.

EFFECTIVE DATE: This amendment is effective on November 19, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: On November 24, 1978, the Coast Guard published a proposed rule (43 FR 54957) concerning this amendment. The Commander, Third Coast Guard District, also published these proposals as a Public Notice dated January 16, 1979. Interested persons were given until

December 27, 1978 and February 16, 1979, respectively, to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr. Project Manager; Office of the Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

Seven comments were received. Two had no objection to the proposal. Two objected to the proposed two-hour notice requirement from 8 a.m. to 12 midnight for the Court Street bridge. The bridge owner has stated that the draw would open on signal from 8 a.m. to 12 midnight and the two-hour notice provision, as proposed, is not contained in the final rule. Advance notice will only be required from midnight to 8 a.m. Two comments objected to any restriction on the Court Street bridge. In view of the fact that the Court Street bridge has been opened on an average of less than once a day, from 1976 to the present the Coast Guard feels that the change adopted will adequately provide for the reasonable needs of navigation.

No objections were received to the proposal to close the railroad bridge at mile 16.3.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding new paragraphs (1–d) and (1–e) immediately after subparagraph (1–c) of § 117.225(f) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * * *

(f) * * *

(1–d) *Hackensack River.* The swing span of the Court Street bridge, mile 16.2, shall open on signal from 8 a.m. to midnight. From midnight to 8 a.m. the swing span shall open on signal if at least eight hours notice is given.

(1–e) *Hackensack River.* The swing span of the New York, Susquehanna, and Western railroad bridge, mile 16.3, need not open for the passage of vessels, and paragraphs (b) through (e) of this section shall not apply to this bridge.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5));

Dated: October 5, 1979.

J. B. Hayes, Jr.,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 79-31758 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Parts 154, 154a

[CGD 74-289]

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases; Special Interim Regulations for Issuance of Letters of Compliance to Barges and Existing Liquefied Gas Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: In FR Doc. 79-13367 appearing at page 25986 in the Federal Register of May 3, 1979, make the following corrections:

1. On page 26012 first column in the paragraph beginning, " 'Liquefied gas' means.... ," the word "gauge" is deleted.

2. On page 26013 first column, in § 154.5(c), sub-paragraph designations "(i)" and "(ii)" are corrected to read "(1)" and "(2)."

3. On page 26016 second column, in § 154.230(h) the word "damaged" is corrected to read "damage."

4. On page 26030 third column, in § 154.801(c)(3) the word "'relieving,'" is deleted.

5. On page 26031 second column, in § 154.804(a)(3)(ii), the word "designed" is corrected to read "design."

6. On page 26033 first column, in § 154.1110(h), the dimension "(7.9 ft)" is corrected to read "(8 ft)."

7. On page 26039 first column, § 154.1735(b)(2)(iii) is corrected to read "A safety relief valve set to relieve at 1.77 MPa gauge (256 psig) or less."

8. On page 26044 in the column entitled "Special Requirements", in the list for the cargo, Ethylene Oxide, the special requirement "154.1870(a)," is corrected to read "154.1870(a),(b)."

FOR FURTHER INFORMATION CONTACT: Dr. Anthony L. Rowek, Office of Merchant Marine Safety (G-MHM-1/TP14), Rm 1405, Department of Transportation, Transpoint Building, 2100 Second Street, S.W., Washington, D.C., 20593 (202-426-1217).

(92 Stat. 1480 (Port and Tanker Safety Act of 1978 (46 U.S.C. 391a); 49 CFR 1.46(n)(4))

Dated: October 5, 1979.

W. D. Markle, Jr.,

Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 79-31759 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 79-106; FCC 79-584]

Changing the Co-Channel Mileage Separation and Frequency Loading Standards for Conventional Land Mobile Radio Systems in the Bands 806-821 and 851-866 MHz

AGENCY: Federal Communications Commission.

ACTION: Denial of Petitions seeking release from a reserve allocation of additional frequencies for conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

SUMMARY: The Commission has denied: (1) a Petition filed by Motorola, Inc. for Partial Reconsideration of action taken by the Commission in its Notice of Proposed Rulemaking in Docket No. 79-106 (FCC 79-282, released May 23, 1979), which declined to release from a reserve allocation additional frequencies for use by conventional land mobile radio systems in the bands 806-821 and 851-866 MHz; and (2) a Petition filed by National Association of Business and Educational Radio, Inc. (RM-3403), seeking an Order releasing from a reserve allocation additional frequencies for use by conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

DATE: Non-Applicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Lewis H. Goldman, Private Radio Bureau (202) 632-6497.

In the Matter of Amendment of Sections 90.365 and 90.377 of the Commission's rules to change the co-channel mileage separation and frequency loading standards for conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

In the Matter of Petition for an Order for releasing additional channel pairs from the reserve pool in 800 MHz band.

Memorandum Opinion and Order

Adopted: September 25, 1979.

Released: October 10, 1979.

By the Commission: Commissioner Quello absent; Commissioner Washburn dissenting and issuing a statement.

1. The Commission has before it petitions filed by Motorola, Inc., (Motorola) and by the National Association of Business and Educational Radio, Inc. (NABER). Both petitions essentially ask the Commission to release from a pool of radio frequencies in reserve in the 806–821 and 851–866 MHz bands a number of channels for assignment to "conventional" land mobile radio systems[1] in the private land mobile radio services. Motorola's petition is for partial reconsideration in PR Docket No. 79–106.[2] NABER's petition is for rulemaking (RM–3403). Motorola seeks the release of 100 additional channels for conventional systems; NABER asks for 50.[3] The General Electric Company (GE) has filed an opposition to Motorola's petition. Some of the comments filed in PR Docket No. 79–106 also addressed this matter and have been considered.

2. Both petitions are directed to our May 3, 1979 action announced in the Notice of Proposed Rule Making in Docket No. 79–106,[4] where we declined to release additional frequencies for conventional 800-MHz systems,[5] and where we adopted a course of action designed to accommodate present applications for conventional systems on frequencies already allocated for that purpose, and on existing radio systems.[6] The petitioners have not directed their attention to the proposed revision of the co-channel mileage separation and frequency loading standards, which is the subject of the Docket, although in separate comments filed in the proceeding they addressed the proposed changes.[7]

3. Briefly, the petitioners argue that the Commission's decision not to release additional frequencies for conventional systems use is ". . . a major departure from the policies adopted in Docket 18262," *Motorola Petition* at p. 3, and ". . . contrary to the mandate established in Docket 18262 . . .", *NABER Petition* at p. 3; that such "departure" is not justified; that the program adopted by the Commission at its May 3, 1979 meeting for accommodating the requirements of applicants for conventional systems is not adequate; that the "failure" to release additional channels ". . . has . . . removed one of the options or choices of systems which were intended to be made available to users in the 800–MHz band . . ." *NABER Petition* at p. 4; and that the needs and requirements of the users for land mobile radio communications can only be fully satisfied by the release of the additional channel pairs they have requested.

4. We have considered carefully the petitions and GE's opposition, as well as the comments on this issue filed in PR Docket No. 79–106. In discussing the arguments advanced, we believe it would be appropriate and useful to review the relevant background leading to the Commission's May 3, 1979 decision, particularly those aspects of the Commission's decisions in Docket No. 18262 to which the petitioners refer and on which they have relied heavily for support of their positions.

5. In Docket No. 18262,[8] the Commission reallocated a total of 115 MHz of radio spectrum from the frequency bands between 806 and 947 MHz, primarily to accommodate the requirements for land mobile communications, both private and public. In its *Second Report and Order*, the Commission designated 40 MHz of that spectrum for the development and operation of a nationwide, broadband mobile radiotelephone system employing cellular technology.[9] In addition, the Commission allocated 30 MHz of spectrum for conventional and trunked systems in the private radio services. This 30 MHz of spectrum was divided into 600 two-frequency channels. Of these, 200 channels were designated for trunked systems, 100 channels for conventional systems, and the remaining 300 channels were placed in reserve. In the private radio services, the Commission continued to provide the various options previously available for obtaining radio service (such as individual radio systems for the licensee's exclusive use, sharing the use of a radio system under the various arrangements then available, etc.) and also offered further choices not previously available. The Commission, for example, adopted rules which provide for the authorization of entrepreneurs to establish base station facilities and make their use available to persons eligible in the Public Safety, Industrial, and Land Transportation Radio Services but without imposing

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[1] A conventional radio system is defined in our rules as a method of radio "... operation in which one or more radio frequency channels are assigned to mobile and base stations but are not employed as a trunked group." *See Section 90.7 of the Commission's Rules.* These are the kind of radio systems the Commission has been authorizing in the lower land mobile frequency bands. In the 800-MHz bands, one to five (5) frequency pairs may be assigned to a licensee for conventional system use. *Section 90.367.* Radio systems requiring more than 5 channels must be trunked.

[2] *Amendment of Sections 90.365 and 90.377, Notice of Proposed Rule Making.* PR Docket No. 79–106, FCC 79–282, 44 Fed. Reg. 31675 (June 1, 1979).

[3] While one of the petitions is for reconsideration and the other requests rule making, both seek essentially the same substantive relief and both have advanced substantially the same arguments in support of their request. Therefore, we have decided to consider them together.

[4] The Notice proposed the revision of the present co-channel mileage separation and frequency loading standards for conventional land mobile radio systems in the 806–821 and 851–866 MHz bands.

[5] Specifically, with regard to the petitioners' concerns, we stated: "... we reviewed very carefully the option of releasing additional channel pairs from the reserve pool, but have concluded that it would be unwise to do so now because the frequencies in reserve would better be used for the more efficient trunked systems." *Notice of Proposed Rulemaking in Docket No. 79–106,* 44 Fed. Reg. at 31676.

[6] The Commission in its Notice of Proposed Rulemaking said that: "[a] number of the 150 conventional channels already assigned, particularly those licensed to operators of Specialized Mobile Radio Systems (SMRS), have additional capacity, even under present frequency assignment standards. In addition, trunked systems which have been authorized and are or will shortly become operational in those areas may be able to accommodate some of the present applicants. Further, some applicants may be able to use channels below 800–MHz, especially if present eligibility restrictions are waived. Finally, in situations where none of the foregoing solutions would be possible or appropriate, the Commission has instructed the staff to consider and grant, upon a proper showing, waiver of the present minimum channel loading standards and other rule restrictions (in accordance with the proposals in this proceeding and subject to its outcome) so as to assign additional users on the present 800–MHz conventional frequencies. These alternatives will be brought to the attention of each of the present applicants by letter. In addition, operators of 800–MHz private radio systems with capacity available in each of the three urban areas will be sent a list of pending applications in the urban area where they operate. This notification procedure will bring the applicants for 800–MHz facilities and the entrepreneurs to each other's attention. With this program we expect to meet the immediate land mobile communications requirements in the three urban areas. However, we plan to watch the progress of this program closely and evaluate its result carefully." *Notice,* 44 Fed. Reg. at 31676.

[7] Motorola has requested partial reconsideration of the Notice of Proposed Rule Making only insofar as it fails to release frequencies from the reserve pool. GE argues that Motorola's petition is, procedurally defective because, according to GE, in rule making proceedings reconsideration petitions may be filed only as to "final actions." Section 1.429 of the Rules. Although GE's challenge raises an arguable question, we think that the public interest would be served by considering the petition for reconsideration on the merits, and therefore, to the extent it is necessary, the relevant provisions of Section 1.429 are waived. This is especially appropriate where, as here, the Commission's action announced in its Notice of Proposed Rulemaking was a final action, not subject to further comment in the rulemaking proceeding.

[8] The relevant decisions of the Commission are discussed in the following documents: *First Report and Order and Second Notice of Inquiry in Docket No. 18262,* 35 Fed. Reg. 8644 (June 4, 1970); *Land Mobile Radio Service, Second Report and Order in Docket 18262,* 46 F.C.C. 2d 752 (1974); *Land Mobile Service, Memorandum Opinion and Order in Docket No. 18262,* 51 F.C.C. 2d 945 (1975).

[9] For a description of a cellular system, See *Second Report and Order,* 46 F.C.C. 2d at 753–754 and *Memorandum Opinion and Order,* 51 F.C.C. 2d at 950–956.

common carrier type of regulation on such licensees.[10] The trunked system was the other important system option not previously available. Thus the range of options to eligibles in the private services was significantly enlarged.

6. Further, the regulatory structure followed by the Commission in the allocation of frequencies in the private radio service constituted a drastic departure from earlier approaches in other bands. Prior to Docket No. 18262, the Commission treated land mobile spectrum requirements from a service perspective, allocating spectrum blocks to each of the several radio service categories. In Docket No. 18262, we instead allocated by type of radio "system," and opened all of the available 30 MHz frequencies to all groups of users.

7. The "system" approach, followed not only in the private radio services but also in the common carrier service, was a new and fundamental policy change. It was intended to foster improved spectrum efficiency and high quality service. The cellular system, a sophisticated, high capacity land mobile system, was adopted for the common carrier radio service. It has the potential for serving a large number of users with quality service, and, through its potential for frequency re-use, improving spectrum efficiency.

The multi-channel trunked system provided for the private land mobile radio services is also a sophisticated facility which offers the user a high grade of service because it reduces the waiting time for a free channel as well as the incidence of a "busy" condition.[11] The final category of system provided for in the 800-MHz band is the basic conventional land mobile system. The conventional system is simpler and cheaper, but results in some loss of traffic efficiency as compared to the trunked and cellular systems. However, the Commission concluded that the conventional system can also be efficient in specific applications and has a definite place in the 800-MHz band along with the other two more sophisticated types of systems.[12] Finally, the Commission decided not to impose common carrier regulation in the private radio services. It determine that the limited entry concept inherent in common carrier regulation was inappropriate for the private radio services, and thus provided for free entry, with a reliance on competitive forces for the regulation of the private land mobile market.

8. There has been no departure from those basic policies. The same choices and options are still available to users of private radio communications. The competitive environment which—as the petitioners point out—the Commission sought to foster, continues to exist, and it has become even more vigorous than originally expected. Radio facilities in the private radio services are being made available free of common carrier type of regulations; this was one of the Commission's major goals in Docket No. 18262. The conventional system option is still available throughout the country, and even in the three largest urban areas (New York City, Chicago, and Los Angeles) where the conventional channels have all been assigned but not totally loaded, substantial additional requirements for conventional systems can be accommodated, particularly under the revised standards adopted in Docket No. 79-106.

9. We view our action not as a departure from the basis policies of Docket No. 18262, but as a necessary pause for the purpose of reviewing our licensing policies to determine whether the radio spectrum allocated in the private services is being used efficiently. Spectrum efficiency was one of the Commission's fundamental goals in Docket 18262 and it remains our goal. Our May 3, 1979 action must be viewed in the context of experience with licensing private radio systems since the conclusion of the proceedings in Docket No. 18262. By the end of 1978, before a single trunked system of the type envisaged by the Commission had become operational, or indeed even authorized, all of the 150 frequency pairs set aside for conventional systems [one quarter of the total of channels available in the private services at 800 MHz] had been assigned in the Los Angeles urbanized area. By mid-1979, these frequencies were also all assigned in the New York and Chicago areas. By May 3, 1979, we had issued 11,353 licenses for conventional systems and 18 licenses for trunked systems. It appears to us that if we had continued to release frequencies for conventional systems simply on demand, we might have ". . . allow[ed] one system [e.g., the conventional] to dominate the market, where the other [the trunked] might better serve the needs and requirements of [the] users . . ." a consequence the Commission had stated in Docket No. 18262 it wanted to avoid.[13]

10. The requirements for conventional systems have not been neglected. The original 100-channel allocation has been

[10] The radio systems authorized under this option are known as specialized mobile radio systems or SMRS. *Memorandum Opinion and Order*, 51 F.C.C. 2d at 947, Note 9.

[11] The Commission described trunked systems as follows: "The second class of system under consideration is the multi-channel trunked system. This system is similar in concept to so-called community repeaters widely employed in the private dispatch service today except that the users would have access to a number of channels instead of just one. Actual channel access is controlled by a central computer, which gives a user the first available channel or places the user in a waiting line (queue) to be served in turn. This technique provides the user a higher grade of service than is possible in comparably loaded non-trunked systems by reducing the amount of time he must wait for a channel and/or reducing the probability that his call will be blocked. Small scale trunked land mobile systems are presently being used to a limited degree by common carriers providing mobile telephone services in the 450 MHz band. The innovation lies in its intended application to vehicular fleet dispatching and the potential of using many more channels per system than is now possible. As proposed by both General Electric and Motorola, trunked dispatch systems would be suitable either for large single users, cooperative groups of users on a cost-shared basis or commercial operators providing service for hire. The nature of trunked systems makes them particularly suitable for serving different types of users of the same group of channels without interference. With today's single-channel systems it is generally desirable to put similar types of users on the same channels in order to control interference. That approach, however, requires separate allocations of channels for the various classes of users which often leads to spectrum inefficiencies. In the trunked system, different types of users can be intermixed more readily as they operate essentially independently of each other, the computer assigning channels on demand. Once a user is assigned a channel, it is his exclusively for the duration of this call and no one else on the system can listen or interrupt during normal operation." *Second Report and Order*, 46 F.C.C. 2d 752 at 754.

[12] The Commission's decription of these systems was: The final category of system proposed for the 900 MHz band is the basic conventional land mobile system in use today in the lower frequency bands. While these systems may also employ one or more channels, their distinguishing feature is manually controlled channel access as opposed to the computer control used in trunked systems. This makes the conventional system simpler and cheaper, but causes some loss of traffic efficiency resulting in either fewer mobiles per channel or lower service quality. The degree of such inefficiency depends largely upon the traffic characteristics of the users. Our analysis would indicate that for a significant segment of the land mobile requirement, particularly where short range, short message communications are involved, the conventional system can be as or more efficient than the trunked system. Therefore, considering its lower cost and greater operational simplicity, the conventional system, we feel, has a definite place in the 900 MHz band alongside the more sophisticated systems described above. *Second Report and Order*, 46 F.C.C. 2d at 754-755.

[13] In Docket No. 18262, the Commission stated: "But, initially, as a matter of policy, we have decided not to authorize, in any one area or region, more than 100 25-kHz channel pairs for conventional use and 200 25-kHz channel pairs for trunked systems. The remaining 300 25-kHz frequency pairs will be temporarily reserved to give us an opportunity to study system development trends in the available spectrum. Further, we do not want to allow one type of system to dominate the market, where the other might better serve the needs and requirements of eligible users. Accordingly, as an interim safeguard, we will impose the restriction mentioned." *Second Report and Order*, 46 F.C.C. 2d at 754-755.

increased by 50%.[14] The Commission, when it allocated the additional channels for conventional use, stated that no more channels would be released for this purpose until the development and practicality of trunked systems for use in the land mobile services were studied and analyzed. The action we have taken in PR Docket No. 79-106 will make the conventional frequencies available to more users, particularly in the more congested urban center where the need for radio communications is greater and where we must see that the limited radio spectrum is used as efficiently as possible through spectrally efficient systems. Because of spectrum scarcity, some of the options for communications service in large urban areas may not always be as available as in lesser populated areas. It is here where we believe we must place more emphasis on spectrally efficient systems in order to accommodate present and future requirements.

11. Accordingly, we reject the petitioners' arguments that our determination not to release more frequencies for conventional systems at this time is a "departure" from or contrary to the "mandate" of the policies the Commission adopted in Docket No. 18262. On the contrary, we believe our decision to pause and to review is consistent with those policies and is dictated by our statutory obligation to assure that the radio spectrum is used efficiently and effectively in the public interest.

12. The petitioners also argue that the Commission was not justified in concluding that trunked systems are "more efficient," that this conclusion was based on erroneous information provided to the Commission by its staff, and that it is a supposition which cannot be supported by either the facts or prior Commission policy. It is true that we have had little experience with trunked radio systems, and therefore do not yet have empirical evidence with respect to their efficiency and effectiveness in the private services. Accordingly, definitive conclusions should not and will not be reached until we have had experience and have gathered empirical information. Our views with respect to the efficiency of trunked systems are based on the conclusions reached by the Commission in Docket No. 18262, where it decided to place ". . . reliance . . ." on trunked systems for accommodating private land mobile communication requirements,[15] and are supported by long experience in other communication fields. Neither evidence nor analysis has been offered questioning the Commission's conclusions in Docket No. 18262.[16] We therefore hold to our view with respect to the spectrum efficiency of trunked systems. It is emphasized that this is a tentative view which we will modify if our experience with trunked systems indicates the necessity. For the moment, however, we have no basis for changing the conclusion reached in Docket No. 18262 and we adhere to it.

13. It has also been argued that trunked systems are more expensive than conventional systems and are not suitable for all of the land mobile requirements. We recognize that trunking is a complex, sophisticated method of radio operation which may not be appropriate for all land mobile users. It is our view, however, that trunked systems are well suited for the bulk of communication requirements now accommodated by conventional systems. Those requirements are for voice communications covering relatively well defined areas of operation and involving users operating a small number (less than 10) mobile units. Larger users operating fleets of vehicles (such as police departments) can also benefit from trunked systems in terms of efficiency of operation, flexibility, and high quality service.

14. As for costs, we realize that the sophisticated and complex trunked systems are more expensive than conventional systems. Our information indicates that multi-channel mobile units for trunked systems now cost about 10% to 24% more (depending on the manufacturer) than comparable quality conventional mobile units from the same manufacturer. The cost differential should be reduced as the manufacture of trunked-equipment progresses from the present stage, as technological developments are incorporated into the design and production of the radio equipment, and as competition increases.

15. Moreover, it is generally recognized that trunked systems offer a higher quality of service, less channel congestion, faster access to the system, simplified radio operation, significant privacy of communications and better reliability, among other benefits.[17] Accordingly, we expect that the additional costs of trunked systems will be outweighed by their significant advantages, and therefore, that higher costs will not substantially inhibit the development and use of these systems.

16. The petitioners argue that the release of additional channel pairs is needed to accommodate the current requirements of users as evinced by pending applications. They also contend that our interim program for accommodating pending applications on existing radio facilities or frequencies already allocated for conventional systems is inadequate.

17. We were certainly aware that not all of the applications pending at the time of our decision (May 3, 1979) would be accommodated on existing frequencies and facilities. We had hoped to at least meet the more urgent requirements of particular users and have met with significant success. For example, 40 of 97 of the applications from Los Angeles applicants then pending have been accommodated,[18] and 25 have been dismissed either at the request of the applicants or for other reasons. Fourteen of the 41 applications from Chicago have been granted and 14 others have been returned, dismissed, or withdrawn by the applicant. In the New York area, we have not been able to accommodate the seven applications submitted as of May 3, 1979. Since then, 38 new applications have been filed from applicants in the Los Angeles area. Of those 6 have been granted and 11 have been dismissed or withdrawn. Three additional applications have been

[14] This was done by *Order*, FCC 78-584, adopted June 21, 1978.

[15] *Memorandum Opinion and Order*, 51 F.C.C. 2d at 969. Indeed, one of the benefits the Commission expected from the competitive environment it sought to establish was to: "Stimulate the development and production of the spectrally efficient communication systems, particularly "trunked" systems, on which we have placed great reliance for improved efficiency in the use of the new spectrum. In "trunked" systems, for example, a "communication channel" can accommodate more users than in systems authorized in the past. Our loading standards are geared to this. While, for now, we have adopted conservative channel occupancy standards for "trunked" systems, we expect that, in the future, a greater number of users can be accommodated. This is significant, because radio spectrum is limited; and we have an obligation to see to it that it is used as fully and effectively as possible."

[16] It has been claimed, however, that trunking could result in longer conversation and reduced circuit discipline. This claim is purely conjectural as there is no evidence to support it. Even assuming that conversations do tend to become longer in trunked systems, the matter can be dealt with by the use of timers, audio tones, and other simple technical means and, where appropriate, by rate differentials.

[17] For a description of the benefits of trunked systems for the private services, see S. Thro, "Trunking—A New System Configuration for Fleet Dispatch Communications," *Conference Record of the Twenty Ninth Annual Conference of the IEEE Vehicular Society* (March 1978).

[18] Among those granted is the application of Medivac, Inc., mentioned by Petioner NABER.

added from Chicago, and two from New York, all of which are still pending.[19]

18. Since our May 3, 1979 action, we have authorized 16 5-channel, 6 10-channel and 3 20-channel trunked system in the Los Angeles area with combined capacity of nearly 20,000 mobile units. In Chicago, we have authorized 14 5-channel, 3 10-channel, and 3 20-channel trunked systems which can accommodate over 15,000 such mobile units. In New York, 9 5-channel, 5 10-channel and 1 20-channel systems have been authorized with combined capacity for accommodating over 10,000 mobile units.

19. Further, in PR Docket No. 79-106, we have adopted revised co-channel mileage separation and frequency loading standards for conventional 800-MHz channels which will increase the capacity of those frequencies by 30% to 40%.[20] As a further measure, in PR Docket No. 79-191, we have proposed to allocate a total of 50 channels from the reserve pool (10 for conventional systems and 40 for trunked) for use exclusively by large, slow growth systems in the Public Safety services, and by some utilities.

20. We have considered the petitioners' requests for the release of additional frequencies in the light of the arguments presented and the information summarized in the proceeding paragraphs. We conclude that it is neither necessary nor desirable to do so at this time. First, there is no need for additional 800-MHz frequencies for conventional radio systems in most parts of the country. The 150 conventional 800-MHz channels have all been assigned only in and near the New York, Chicago, and Los Angeles areas. These areas contain about 26 million people, which is about 12% of the total U.S. population (about 220 million people). Even in those areas there is considerable capacity for additional use, particularly under the revised frequency assignments standards. Furthermore, to the extent that there will be needs which cannot be accommodated on the existing conventional channels in these three large cities, trunked systems with capacity to accommodate from 10,000 to almost 20,000 mobile units have now been authorized. We are regularly licensing new users of those trunked systems already authorized and in operation. Therefore, we see no need to allocate additional channels at this time.

21. Moreover, releasing additional channels for use in Los Angeles would make it difficult for us to provide frequency resources for the land mobile communication requirements in Southern California near the Mexican border, including the City of San Diego. No 800-MHz frequencies are available in San Diego and other locations near the border because the necessary coordination with the Mexican government has not been completed. We have assigned 350 800-MHz channels to users in Los Angeles, but unusual radio propagation conditions there raise serious questions as to whether these channels can be reused in the San Diego area. In effect, there are only 200 channels available for use in the San Diego area,[21] some of which may have to be shared with Mexican licensees. We therefore concluded that it is not desirable to release additional channels in the Los Angeles area before the conclusion of negotiations with the Mexican government, and before we determine how the needs for land mobile communications near the border can best be accommodated.

22. While we are not faced with the border problem in the New York and Chicago urbanized areas, we nevertheless believe that release of additional channels there would also be undesirable at this time, particularly since the existing frequencies and the facilities we have already authorized are adequate to accommodate current and near future requirements. A pause here also will give us the opportunity we need to determine how well trunked systems will meet the communications requirements in the private radio services and will allow us to make more informed judgments as to the spectrum efficiency of these systems. We should not lose the opportunity we now have to provide for the use of the remaining frequencies in a manner in which the communication requirements of a larger segment of the public can be met with improved quality of land mobile communications services.

23. It should be pointed out that we are faced with spectrum scarcity. Nearly 400 of the 600 channels allocated in the private radio service at 800-MHz have already been assigned, and requests are being filed for the unallocated reserve bands between 821 and 947 MHz. It is therefore important that we consider spectrum conservation measures before all of the spectrum is exhausted.

24. For the foregoing reasons, we conclude that the above-described petitions filed by Motorola, Inc., and by the National Association of Business and Educational Radio, Inc., should be denied, and IT IS ORDERED, Pursuant to Sections 303 and 405 of the Communications Act of 1934, as amended, that those petitions are denied.

Federal Communications Commission.*

William J. Tricarico,

Secretary.

Dissenting Statement of Commissioner Abbott Washburn

Re: Freeze of Conventional Land Mobile Radio Systems.

Last May I expressed my preference to take care of the backlog of applications by releasing 50 additional channels for conventional use. Today, some four and a half months later, that backlog still exists. Even with the revised loading standards adopted today, companies and government agencies in New York, Chicago and Los Angeles will still not be able to obtain conventional service. By the staff's admission:

"It is true that we have had little experience with trunked radio systems, and therefore do not yet have empirical evidence with respect to their efficiency and effectiveness in the private services. Accordingly, definitive conclusions should not and will not be reached until we have had experience and have gathered empirical information . . ."**

In that regard I am glad that the Commissioners will continue to receive monthly reports from the Chief of the Private Radio Bureau and that in six months we will receive a comprehensive update on this entire question. In the meantime users must continue to wait for service.

National priorities for the 1980's place great emphasis on the conservation of gasoline and on increasing productivity in order to fight inflation. Mobile communications are ideally suited to contribute to both these objectives. It is my firm belief that there will be a continuing need for both conventional and trunked private systems as well as for common-carrier-provided mobile telephone service. It is only the individual customer, who is intimately familiar with the myriad of details in his own business and who is responsible for its success, who can make

[19] The Los Angeles applications (those that were pending as of May 3, 1979, and those filed since then) involved a total of 2,266 mobile units. Of these, the granted applications account for 436, and the pending for 1,284 mobile units. The Chicago applications involved 1,445 mobiles. Of those, 350 have been granted, 316 dismissed and applications for a total 779 mobile units are pending. In New York, the pending applications involve a total of 269 mobile units. This information is from the Commission's files as of September 14, 1979.

[20] This will result as the loading standards will be raised, for example, from 70 to 90 mobile units in the business radio service, and by comparable increases in other services. The 30% to 40% figures were derived from actual computations of the capacity of existing channels under the proposed revised loading standards.

[21] Only 200 channels will be available if we assume that the 350 channels now assigned in Los Angeles cannot be reused in San Diego, and if we exclude the 50 additional channels we have proposed to set aside for slow growth systems in PR Docket No. 79-191.

*See attached dissenting statement of Commissioner Abbott Washburn.

**Today's Memorandum Opinion and Order in PR Docket 79-106, paragraph 12.

intelligent choices among the mobile communications offerings.

This philosophy permeated our Docket 18262 where, for the first time, we had available sufficient spectrum to make all these opportunities reality and to allow such a broad range of options to customers. It is time to stop wetnursing trunked systems at the expense of user choice. Today we should be utilizing some of these frequencies which are still held in reserve, in order to promote competition between the services. It is not a time to pause and prohibit. Therefore, I must dissent.

[FR Doc. 79-31740 Filed 10-12-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 301

Organization and Delegation of Powers and Duties of the Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Part 301.60 by removing certain limitations on the delegation of authority in the Motor Carrier Safety Program provided to Regional Administrators. It is an internal organizational matter within the Federal Highway Administration (FHWA) and has no substantive or procedural effect on any party outside the FHWA.

EFFECTIVE DATE: November 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Warren J. Vibbard, Administrative Program Coordinator, Office of Safety, 202-426-0748, or Mr. Gerald Tierney, Attorney, Office of the Chief Counsel, 202-426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Regulations (49 CFR Parts 386, 390-399) provide that enforcement actions may be taken to compel observance of the safety practices set forth, and that criminal prosecutions and civil penalties may be imposed on those violating the regulations. Title 49 CFR, Part 301, provides delegations of authority to various officials in FHWA to take certain enforcement actions. Previously Regional Administrators had authority to initiate, take action, and terminate civil forfeiture proceedings in cases in which claims for under $25,000 in penalties were to be assessed. For claims above that amount, authority was vested in the Associate Administrator for Safety and delegable to the Director, Bureau of Motor Carrier Safety. This amendment removes the $25,000 limitation, and gives the Associate Administrator and Regional Administrator equal authority to proceed in civil forfeiture actions. It is expected this action will result in increased program effectiveness. Since this action effects only the internal authorities and organizations of the FHWA and contains no substantive changes, the notice and comment stages of rulemaking are unnecessary.

Accordingly, 49 CFR Part 301 is amended by revising § 301.60(d)(1)(iv), (d)(1)(v), (d)(2)(i) and (e)(5) as follows:

§ 301.60 Delegations of authority relating to motor carrier safety.

* * * * *

(d) * * *

(1) * * *

(iv) Initiate, compromise, suspend, and terminate proceedings commenced by notice of investigation pursuant to 49 CFR 386.11.

(v) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

* * * * *

(2) * * *

(i) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

* * * * *

(e) * * *

(5) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

* * * * *

Note.—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. The impact of this rule is so minimal that it does not warrant the preparation of a regulatory evaluation.

(49 U.S.C. sections 304, 1655; 49 CFR 1.48)

Issued on: October 2, 1979.

L. P. Lamm,

Executive Director.

[FR Doc. 79-31580 Filed 10-12-79; 8:45 am]
BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 44, No. 200
Monday, October 15, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-79-41]

Mandatory Petroleum Allocation Regulations; Phased Deregulation of Upper Tier Crude Oil

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Further Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing alternative amendments to the supplier/purchaser rule to implement the President's decision gradually to deregulate domestic crude oil. Today's proposals complement and are part of the previously announced phased deregulation rulemaking proceeding to permit market prices to be charged for first sales of a steadily increasing percentage of crude oil that would otherwise be subject to the upper tier ceiling price. Under one of today's alternative proposals any crude oil for which market price might be charged as a result of phased deregulation would be exempted from the provisions of the supplier/purchaser rule. The other proposal would permit a supplier to sell such crude oil to any purchaser which made a bona fide offer in writing for such oil if the existing purchaser was not willing to meet that offer. These proposed revisions to the supplier/purchaser rule are intended to ease the transition to a free market.

DATES: Proposed effective date: January 1, 1980. All requests to speak at Washington hearing by October 18, 1979, 4:30 p.m. Albuquerque hearing date: October 16, 1979, 9:30 a.m. (unless cancelled), Washington hearing date: October 24, 1979, 9:30 a.m. Written comments on today's proposal only by December 10, 1979, 4:30 p.m. Written comments on the proposed pricing regulation amendments in this docket due October 31, 1979, 4:30 p.m.

ADDRESSES: All written comments and requests to speak at the Washington hearing to: Economic Regulatory Administration, Office of Public Hearings Management, Docket No. ERA-R-79-41, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2222-A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-5201.
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.
William Carson (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2310, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7477.
Ben McRae (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTAL INFORMATION:

I. Background and Proposals

On April 5, 1979, the President announced his intention to deregulate all domestic crude oil. We have already taken several steps to implement the President's decision, including our proposing, in a previous notice issued in this docket, to provide for the gradual reduction, between January 1, 1980 and October 1, 1981, of the percentage of crude oil subject to the upper tier price ceiling (44 FR 50605, August 29, 1979). Under this proposal, beginning January 1, 1980, market prices would be permitted for first sales of a specified percentage of the crude oil produced from a property that would otherwise be subject to the upper tier ceiling price. This percentage would increase at a rate such that by October 1, 1981 market prices would be permitted for all crude oil production subject to the upper tier ceiling price. For January 1980 the specified percentage would be 4.6 percent (approximately one twenty-second), and in each succeeding month the specified percentage would be increased by an additional 4.6 percent. The crude oil which could be sold pursuant to this proposal would be known as market level new crude oil.

In addition to establishing ceiling prices for domestic crude oil, the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended) have frozen, in most instances, the supplier/purchaser relationships that existed in 1973. We believe it would be appropriate to free crude oil from the supplier/purchaser rule as that crude oil is released from price controls. Accordingly, we are expanding the phased deregulation rulemaking proceeding to consider two alternative proposals that would grant suppliers greater flexibility in selling market level new crude oil. Specifically, we are proposing to amend 10 CFR 211.63(a) to eliminate the obligations imposed upon suppliers under the supplier/purchaser rule with respect to any crude oil the first sale of which is made pursuant to the pricing provisions of § 212.74(a) for market level new crude oil. This proposal is intended to subject a steadily increasingly percentage of crude oil dealings to the rigors of an unregulated market and, thus, ease the complete transition to such a market that will occur on October 1, 1981.

We also are considering adopting an alternative approach in the form of a technical amendment to ease this transition. Under this approach, market level new crude oil would be treated like stripper well lease crude oil under the supplier/purchaser rule. This approach would permit a supplier to seek the most advantageous commercial relationship by terminating a supplier/purchaser relationship if an existing purchaser was not willing to meet any bona fide written offer made by another purchaser to buy market level new crude oil. Specifically, we would amend § 211.63(d)(1)(iii) to apply to market level new crude oil as well as old, new and stripper well lease crude oil.

II. Written Comment and Public Hearing Procedures

In order to allow an opportunity for full public discussion of those aspects of phased deregulation concerning the supplier/purchaser rule, we are extending the dates by which requests must be made to speak at the public hearings concerning phased deregulation. Requests for the Washington hearing will be accepted

through October 18. In addition, we are providing the period through December 10, 1979 for written comments on the amendments proposed in this notice. Written comments on the pricing issues previously proposed in this docket will continue to be due by October 31, 1979 (see 44 FR 50605, August 29, 1979).

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. Comments should be submitted by 4:30 p.m., November 20, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Crude Oil Deregulation." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, or represent a group or class of persons that has an interest, you may make an oral request by October 18, 1979, for an opportunity to make an oral presentation at the Washington hearing. You should provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard at a hearing, you will be so notified before 4:30 p.m., October 12, 1979, for the Albuquerque hearing and before 4:30 p.m., October 19, 1979 for the Washington hearing and will be required to submit one hundred copies of your statement to the hearing location before 9:30 a.m. on the day of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at each of the hearings. These will not be judicial-type hearings. Questions may be asked only by those conduct the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire records of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of either hearing from the reporter.

III. Procedural Requirements

We are preparing a regulatory analysis which carefully examine today's proposals as well as our previous proposal concerning phased deregulation of crude oil subject to upper tier price ceilings. Upon completion of a draft of this analysis, we will publish a notice announcing its availability.

We currently are reviewing the effects of these proposals on the quality of the human environment and will perform any environmental analysis required by the National Environmental Policy Act (NEPA, 32 U.S.C. 4321 *et seq.*) and the applicable DOE regulations for compliance with NEPA.

In accordance with Section 7(a)(1) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of this proposal on the quality of the environment. The EPA Administrator has responded that EPA does not foresee this Rule having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of EPA.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) we have referred this proposal, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether it would significantly affect any matter within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below, effective January 1, 1980.

Issued in Washington, D.C., October 9, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Alternative Proposal One

Section 211.63(a) is revised to read as follows:

§ 211.63 Domestic crude oil supplier/purchaser relationships.

(a) *Scope.* This section provides for the allocation of crude oil produced in the United States other than crude oil which is the subject of (1) purchases and sales made to comply with § 211.65 of this subpart; (2) sales of crude oil made pursuant to Parts 225 and 225a, Chapter II of Title 30 of the Code of Federal Regulations; (3) the first sale of crude oil under 10 U.S.C. 7430(b), as amended by § 201 of the Naval Petroleum Reserves Production Act of 1976; (4) the first sales of any domestic crude oil produced and sold from a property from which domestic crude oil was not produced and sold prior to January 1, 1976; and (5) sales of any domestic crude oil for which § 212.74(a) provides that the first sale will not be subject to the ceiling price limitations of Subpart C of Part 212.

* * * * * *

2. Alternative Proposal Two

Section 211.63(d)(1)(iii) is revised to read as follows:

§ 211.63 Domestic crude oil supplier/purchaser relationships.

* * * * *

(d) *Termination of supplier/purchaser relationships.* (1) * * *

(iii) by a producer (as defined in Part 212 of this chapter), if the present

purchaser as to any old, new, market level new crude oil (as defined in § 212.72 of Part 212 of this chapter) or stripper well lease crude oil (as defined in §§ 212.72 and 212.74 of Part 212 of this chapter) refuses, within a fifteen day period after receipt of written notice as to that offer from the producer, to meet any bona fide written offer made by another purchaser to purchase such crude oil at a lawful price above the price paid by the present purchaser.

[FR Doc. 79-31749 Filed 10-12-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 37

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee.

DATES: Meeting date: November 2, 1979 at 9:30 a.m.

ADDRESSES: Meeting location: Fort Myer Officer's Club, room #1, Fort Myer, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Karl F. Bierach, (202) 426-8828.

SUPPLEMENTARY INFORMATION: The Agenda for this meeting is as follows: (1) Approval of Minutes of the Meeting held September 21, 1979; (2) Special Committee Activities Report for September-October, 1979; (3) Chairman's Report on RTCA Administration and Activities; (4) Consideration of Establishing New Special Committees; (5) Discussion of FAA NPRM on TSO De-regulation; (6) Discussion of Federal Trade Commission Hearings on Standards and Certification, Proposed Trade Regulation Rules; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on October 1, 1979.

Karl F. Bierach,
Designated Officer.

[FR Doc. 79-31741 Filed 10-12-79; 8:45 am]
BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 233, 302

[EDR-387A/PDR-68A; Economic Regulations, Procedural Regulations, Docket 36497, dated: October 9, 1979]

Transportation of Mail and Establishment of Mail Rates and Rules Applicable to Mail Rate Proceedings; Establishing Mail Rate Zones for Interstate, Overseas, and Foreign Air Transportation; Extension of Comment Period

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Extension of Comment Period.

SUMMARY: The CAB is extending until November 5, 1979, the filing date for initial comments, and until November 20, 1979, the filing date for reply comments, in a rulemaking proceeding that proposes modification in the procedures by which air mail rates are set.

DATES: Comments by: November 5, 1979. Reply comments by: November 20, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 36497, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5791.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-387/PDR-68, 44 FR 52246, September 7, 1979, the Board proposed to establish new procedures for setting interstate, overseas, and foreign air mail rates under section 406 of the Federal Aviation Act.

Counsel for the local service carriers, with the exception of Frontier Airlines, has asked for an extension of the comment period by approximately 2 weeks. The basis for the request was that the persons responsible for preparation of the carriers' comments had prior commitments that prevented the comments from being prepared.

Upon consideration of the above, the undersigned finds good cause to grant the requested extension of time. The Board would like to have the fullest possible data and arguments on this change in its mail rate procedures.

Accordingly, under authority delegated in 14 CFR § 385.20(d), the time for filing of comments and reply comments is extended as requested.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324)

Mark Schwimmer,
Acting Associate General Counsel, Rules & Legislation.

[FR Doc. 79-31758 Filed 10-12-79; 8:45 am]
BILLING CODE 6320-01-M

14 CFR Part 270

[EDR-390, Docket: 36816, dated: October 9, 1979]

Criteria for Designating Eligible Points

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Civil Aeronautics Board proposes criteria that it will use to decide which communities should be eligible points. These criteria will be applied to communities that were deleted from an air carrier's certificate between 1968 and 1978, and to other communities in Alaska and Hawaii. the rule is required by the section of the Federal Aviation Act that guarantees essential air service to small communities that are eligible points.

DATES: Comments by: November 14, 1979.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on Service List by: October 25, 1979.

The Docket Section prepares the Service List and sends it to the persons listed on it, who then serve their comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 36816, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in

Room 711, Civil aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Patrick V. Murphy, Jr., Chief, Essential Air Services Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5408.

SUPPLEMENTARY INFORMATION:

Background

Section 419 of the Federal Aviation Act of 1958 (49 U.S.C. 1389) requires the Civil Aeronautics Board to guarantee essential air service at all "eligible points." There are three groups of communities that may be eligible points under the Act. For these eligible communities the Board is to establish a level of service as the essential level and ensure that that level of service is provided even if it requires Federal financial assistance.

The first group of eligible points are those that were listed on an air carrier's section 401 certificate on October 24, 1978. Section 419(a) of the Act defines them as eligible and no further action concerning their eligibility is required of the Board. They are therefore not involved in this rulemaking.

The second group of communities are those that were deleted from an air carrier's section 401 certificate between July 1, 1968 and October 24, 1978. The deleted communities will be eligible points if they meet the criteria that the Board is proposing in this rulemaking.

This group also includes communities that lost all certificated air service at their airport as a result of being hyphenated on a carrier's section 401 certificate between July 1, 1968 and October 24, 1978. As explained in PSDR-59 (44 FR 27438, May 10, 1979), a community that lost all service as a result of being hyphenated has, for all practical pruposes, been deleted and may be entitled to consideration under the essential air service program. The service needs of such a community that was hyphenated with a point receiving service from only one or no certificated air carriers will be considered with that single-carrier point. the board will determine the essential air service of both communities of the hyphenated point as one eligible point under section 419(a). This may result in requiring service to both communities' airports.

If the community is hyphenated with a multi-carrier point, however, it will not have its essential air service determined under section 419(a). Section 419(a) does not require an essential air service determination for multi-carrier points. A community in this situation may apply to the Board for consideration under section 419(b) as a deleted point and it may be designated an eligible point if it meets the criteria that the Board is proposing in this rulemaking.

The Act makes special provision for communities in Alaska and Hawaii. In addition to the communities in those two States that fall within one of the two groups described above, the Board can decide that any other community in Alaska or Hawaii should be an eligible point. To be designated an eligible point, the community must apply, and must meet the criteria proposed here. These communities are also subject to an additional limitation that their designation as eligible must not increase the total number of points receiving Federal subsidy above the number that were receiving such subsidy on July 1, 1968.

Criteria for Communities in the 48 States

General. The purpose of this rulemaking is to establish objective criteria for determining which deleted communities and other communities in Alaska and Hawaii should be eligible points. These criteria are required by section 419(b) of the Act. By January 1, 1982, the Board, applying these criteria, must decide which of the deleted communities should be eligible points. After January 1, 1982, the criteria will be used to designate additional eligible points from the group of points in Alaska and Hawaii that apply for such designations. If a community is designated an eligible point under these criteria, it will be guaranteed essential air transportation to the same extent as communities that are certificated for air service. (See PS-87, 44 FR 52646, September 7, 1979, for the guidelines that the Board will follow in determining essential air service levels for eligible points.)

Section 419(b)(2) sets forth five factors that the Board should consider in establishing or modifying its criteria. They are the level of traffic generated by the community, its future traffic-generating potential, the cost to the Federal Government of providing essential air transportation to the community, the alternative means of transportation available to the residents of the community for access to the national transportation system and its principal communities of interest, and the degree of isolation of the community from the national air transportation system. These factors can be combined into two basic criteria—isolation and traffic.

Isolation. Communities that are close to hubs or to eligible points have reasonably convenient access to air service by ground transportation. Residents of those communities need to travel only a short distance to obtain air transportation and guaranteeing them their own air service, at government expense, cannot therefore be justified. Residents of more distant communities, however, require air service so that they will have reasonably convenient access to the national transportation system and to their principal destinations. The Board will designate the more distant communities as eligible points and guarantee them air service if there is sufficient traffic there.

The exact distance at which access to the national air transportation system is no longer reasonably convenient cannot be determined precisely. An objective criterion must be provided, however, and so we propose that communities that are less than 30 road miles from a hub airport not be eligible points, and not be guaranteed air service by the Board.

We also propose that a community should not be designated an eligible point under section 419(b) if it is less than 20 road miles from the airport at a section 419(a) eligible point. The distance proposed between communities and non-hub eligible points is shorter than that for communities and hubs because the travel opportunities at a hub are likely to be better than at a non-hub. Yet, when air service is available at a nearby eligible point, there is no need to guarantee air service at the candidate community. Residents of that community need to travel only a short distance by ground transportation to obtain air service at the eligible point. Under our essential air service guidelines in 14 CFR 398.2, the air service at an eligible point must include service to at least one hub. The access of the candidate community therefore would not be appreciably improved by guaranteeing them their own air service and doing so could undermine the existing service at the non-hub eligible point by diverting its passengers to government-supported air service at the candidate community.

For the purpose of this criterion, non-hubs are only those points that were certificated for air service on October 24, 1978. These are eligible points under section 419(a) of the Act and the Board is required to maintain essential air service there. Air service at other non-hubs that are not eligible points is subject to termination and a community's eligibility should not depend on its proximity to such a non-eligible point. Although guaranteeing air service at a community may divert traffic from a neighboring non-eligible

point, we doubt that the situation will often arise. We tentatively conclude that air service at a nearby non-eligible point should not be a criterion in determining the eligibility of a community.

Traffic. Although isolated, a community will not be designated as an eligible point unless it generates or has the potential for generating some minimum level of traffic. The cost to the Federal Government of providing essential air transportation cannot be justified if few people at the community will use it. Also, low traffic levels may indicate that the residents already have relatively easy access to alternative transportation and to hub airports.

In determining traffic levels, the Board will initially examine the level of traffic that has historically been available at the community. Communities, however, may show that their historic traffic does not accurately reflect demand at their community because of the poor service they received in the past. Communities could also submit data on population and commercial growth or other evidence of travel growth to prove that their demand for air service has increased. This information will also be considered by the Board to determine whether communities, excluded from the essential air service program on the basis of their historic traffic, have sufficient potential traffic to meet the criteria for eligibility. If it becomes clear over time, however, that the community is not meeting the Board's traffic criteria, section 419(b)(3) of the Act gives us the power to withdraw its designation as an eligible point.

Interaction of the criteria. Communities that are more 30 road miles from a hub airport and more than 20 road miles from the airport of an eligible non-hub may be designated eligible points depending on their traffic levels. The more isolated the community, the greater its need for air service and the lower the level of demand that it will have to demonstrate in order to be guaranteed air service by the Board.

We propose two groups. These groupings are consistent with the factors enumerated in section 419(b) of the Act and with a March 1976 study by the Department of Transportation on "Air Service To Small Communities." That study found that communities enplaning more than 10 passengers a day have better than a 50 percent chance of retaining air service without government subsidy. The cost to the Federal Government of providing essential air service is one factor that Congress directed us to consider in developing our criteria. Communities farther than 60 road miles from a hub airport would therefore be designated eligible points if they enplane at least 10 passengers each day during 5 days of the week. In the shorter-haul markets, where competition from alternative transportation is more acute, higher traffic levels are required if commuter service is to have a reasonable opportunity to become self-supporting. We propose therefore that communities between 30 and 60 road miles from a hub airport would need to show that they would enplane 20 passengers each day to be designated an eligible point.

We have considered, although tentatively rejected, a separate criterion for the most isolated communities, those that are 100 or 150 road miles from a hub, whereby they would have to demonstrate sufficient demand to enplane only five passengers each day in order to receive eligible point status. It appears that there are few deleted communities that would be affected by this criterion. Comments are specifically requested on whether there is a need for a separate standard for the most isolated group of communities.

Criteria for Communities in Alaska and Hawaii

We propose a separate subpart for communities in Alaska and Hawaii. Although, at least in the case of Hawaii, the traffic and isolation criteria will be the same as in the 48 contiguous states, a separate subpart is necessitated by the special statutory provision governing the designation of additional eligible points in these two states. Also, the unique circumstances of air service in Alaska requires completely different criteria for that state's communities.

A community's actual or potential traffic level is the only relevant criterion in Alaska. There is no reason to consider isolation there, because all Alaskan communities are isolated under the criteria we are using. We propose that a community in Alaska, deleted from a carrier's certificate, should be designated an eligible point if it enplanes or has the potential for enplaning five passengers each week or an equivalent combination of cargo, mail and passengers. We will consult with the Alaska Transportation Commission to ensure that the points designated as eligible have adequate airport facilities and warrant Federal support. There are no deleted communities in Hawaii.

In addition to the deleted communities, section 419(b)(2) permits the Board to designate other communities in Alaska or Hawaii as eligible if doing so will not increase the number of points receiving Federal subsidy above the 1968 level of subsidized points. It has not yet been determined how many points were subsidized in 1968. We do not expect this to be a significant limitation on designating additional eligible points, however, because the USAir (formerly Allegeheny) and Texas International systems, which were subsidized in 1968, are no longer receiving subsidy under section 406. This sharply reduces the number of points now being subsidized by the Board and leaves room for many to be added under section 419(b)(2). Subject to this limitation, communities in Alaska that apply may be designated eligible points if they meet the five-passenger-per-week criterion described above. Also subject to this limitation, Hawaiian communities that apply may be designated eligible if they meet the same isolation and traffic criteria applicable to the 48 contiguous States.

Many of the communities in Alaska that will be eligible points are very small and their demand for air service is sporadic and unpredictable. They can be most efficiently served by on-demand rather than by scheduled service. The Board's essential air service guidelines in 14 CFR Part 398 provide the flexiblility to rely on on-demand service where that will meet the essential needs of these points.

Procedures

We are not proposing a separate procedural rule at this time. It may not be necessary to have one at all, because the designation of eligible points is a one-time task, at least in the 48 contiguous States. After the criteria proposed here become final, we intend to request information from the affected communities concerning their isolation and traffic levels. On the basis of this information and its own analysis, the Board will designate as eligible points the communities that meet the isolation and traffic criteria. After the Board's order is issued, a community could petition for reconsideration under 14 CFR 302.37. If a factual issue is raised, such as the community's potential traffic, an oral evidentiary hearing might be held.

The Proposal

The Board requests comments on the criteria proposed here. Commenters should not focus on the traffic levels or air service needs of their community at this time. These matters will be evaluated after the final criteria are adopted. Because the Act requires that a final rule be adopted by January 1, 1980, only 30 days can be allowed for comments.

Accordingly, the Civil Aeronautics Board proposes to amend Chapter II of

14 CFR by adding a new Part 270, *Criteria for Designating Eligible Points*, to read:

PART 270—CRITERIA FOR DESIGNATING ELIGIBLE POINTS

Subpart A—General Provisions

Sec.
270.1 Purpose.
270.2 Applicability.
270.3 Definitions.
270.4 Computation of distance.
270.5 Computation of traffic.

Subpart B—Criteria for Communities in the 48 Contiguous States

270.10 Communities close to hubs.
270.11 Communities not close to hubs.
270.12 Communities close to non-hub eligible points.

Subpart C—Criteria for Communities in Alaska and Hawaii

270.20 Deleted communities.
270.21 Other communities.

Authority: Secs. 204 and 419 of the Federal Aviation Act. 1958, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389.

Subpart A—General Provisions

§ 270.1 Purpose.

This rule establishes objective criteria for designating small communities as eligible points under section 419(b) of the Act.

§ 270.2 Applicability.

This part applies to the following communities:

(a) Communities that were deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978;

(b) Communities that lost all service at their airport as a result of being hyphenated with another community on a section 401 certificate between July 1, 1968, and October 24, 1978; and

(c) Any other communities in Alaska or Hawaii that apply for designation as an eligible point.

§ 270.3 Definitions.

As used in this part:

"Eligible point" means a community for which the Board will guarantee essential air service.

"Hub" means a point enplaning more than 0.05 percent of the total enplanements in the United States.

§ 270.4 Computation of distance.

Distance between a community and a hub, or between a community and another point, shall be measured by computing the driving distance from the community's center to the hub's airport or to the point's airport.

§ 270.5 Computation of traffic.

In computing traffic at a community the Board shall consider the following information:

(a) Historic traffic levels at the community; and

(b) Information submitted by the affected community that indicates that data on its historic traffic do not accurately reflect its potential demand for air service.

Subpart B—Criteria for Communities in the 48 Contiguous States

§ 270.10 Communities close to hubs.

A community that is less than 30 road miles from a hub airport will not be designated as an eligible point by the Board.

§ 270.11 Communities not close to hubs.

Except as provided in § 270.12—

(a) A community that is at least 30, but less than 60, road miles from a hub airport will be designated as an eligible point by the Board if that community enplanes or has the potential for enplaning 20 passengers each day during 5 days of the week; and

(b) A community that is 60 or more road miles from a hub airport will be designated an eligible point by the Board if that community enplanes or has the potential for enplaning 10 passengers each day during 5 days of the week.

§ 270.12 Communities close to non-hub eligible points.

A community will not be designated as an eligible point under this part if it is less than 20 road miles from the airport of a section 419(a) eligible point.

Subpart C—Criteria for Communities in Alaska and Hawaii

§ 270.20 Deleted communities.

A community in Alaska that was deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978, or lost all service at its airport as a result of being hyphenated with a multi-carrier point on a section 401 certificate between those dates, will be designated an eligible point by the Board if it enplanes or has the potential for enplaning at least 5 passengers each week.

§ 270.21 Other communities.

(a) Any community in Alaska not covered by § 270.20 may be designated an eligible point if, upon the application of that community, the Board finds that—

(1) The community enplanes or has the potential for enplaning at least 5 passengers each week; and

(2) Designating that community as an eligible point will not result in more than — points* receiving a subsidy under section 419 and section 406 of the Act.

(b) Any community in Hawaii may be designated an eligible point if, upon the application of that community, the Board finds that—

(1) The community meets the criteria set forth in Subpart B of this part; and

(2) Designating that community as an eligible point will not result in more than — points* receiving a subsidy under section 419 and section 406 of the Act.

(Secs. 204 and 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

DELETED POINTS ELIGIBLE FOR CONSIDERATION (POINTS DELETED FROM CARRIER CERTIFICATES*)

[July 1, 1968, through Oct. 24, 1978]

State and point	Carrier	Date of deletion
Alaska:		
Alognak	Kodiak	10/14/75
Bettles Village	Wien	1/8/76
Chatham Straits	Alaska	10/8/76
Chenega	Alaska	10/8/76
Chichagof	Alaska	10/8/76
Cobol	Alaska	10/8/76
Cripple Landing	Wien	10/8/76
Edna Bay	Alaska	10/8/76
Elamar	Alaska	10/8/76
Folger	Wien	10/8/76
Ganes Creek	Wien	10/8/76
Glacier Creek	Alaska	10/8/76
Granite Mine	Alaska	10/8/76
Hamilton	Wien	10/8/76
Hirst	Alaska	10/8/76
Holikachuk	Wien	10/8/76
Kaguyak	Kodiak	10/14/75
Kalalla	Alaska	10/8/76
Kenny Cove	Alaska	10/8/76
Koknnes	Wien	10/8/76
Latouche	Alaska	10/8/76
Livengood	Wien	10/8/76
Meade River	Wien	10/8/76
Moses Point	Wien	10/8/76
Napamute	Alaska	10/8/76
Nellie Juan	Alaska	10/8/76
Nenana	Alaska	10/8/76
Northway	Alaska	10/8/76
Oceanic (Thumb Bay).	Alaska	10/8/76
Ophir	Wien	10/8/76
Paimiut	Wien	10/8/76
Peak Island	Alaska	10/8/76
Perry Island	Alaska	10/8/76
Pillar Bay	Alaska	10/8/76
Point Baker	Alaska	10/8/76
Poorman	Wien	10/8/76
Port Althorp	Alaska	10/8/76
Port Armstrong	Alaska	10/8/76
Port Alexander	Alaska	10/8/76
Port Ashton	Alaska	10/8/76
Port Conclusion	Alaska	10/8/76
Port Wakefield/Port Vita/Iron Creek.	Kodiak	10/14/75
Port Walter	Alaska	10/8/76
Seward	Alaska	10/8/76
Shearwater	Kodiak	10/14/75
Summit	Alaska	10/8/76
Talkeetna	Alaska	10/8/76
Tolovana	Wien	10/8/76
Todd	Alaska	10/8/76
Tyee	Alaska	10/8/76
Uyak	Kodiak	10/14/75

*The number of subsidized points on July 1, 1968 will be supplied at a later date.

DELETED POINTS ELIGIBLE FOR CONSIDERATION (POINTS DELETED FROM CARRIER CERTIFICATES*)—Continued

[July 1, 1968, through Oct. 24, 1978]

State and point	Carrier	Date of deletion
Warm Springs	Alaska	10/8/76
Washington Bay	Alaska	10/8/76
Woodchopper	Wien	10/8/76
Arizona:		
Douglas	American	12/5/74
Arkansas:		
Pine Bluff	Texas Int'l.	10/17/75
California:		
Alhambra	Los Angeles	9/2/75
Anaheim/Disneyland	Los Angeles	9/2/75
Apple Valley	Airwest	12/10/73
Azusa	Los Angeles	9/2/75
Berkeley	SFO	12/22/76
Corte Madera-San Rafael (Marin County).	SFO	12/22/76
Glendale	Los Angeles	9/2/75
Inyokern	Airwest	10/28/73
Lake Tahoe	Airwest	6/15/74
Marysville-Yuba City	Airwest	12/27/70
Maywood	Los Angeles	9/2/75
Monrovia	Los Angeles	9/2/75
North Hollywood	Los Angeles	9/2/75
Orinda-Lafayette-Walnut Creek (Contra Costa County).	SFO	12/22/76
Palo Alto	SFO	12/22/75
Pomona	Los Angeles	9/2/75
San Bernardino	Los Angeles	9/2/75
San Fernando	Los Angeles	9/2/75
San Luis Obispo/Paso Robles.	Airwest	10/11/73
Sunnyvale	SFO	12/22/76
Thousand Oaks	Los Angeles	9/2/75
Van Nuys	Los Angeles	9/2/75
West Covina	Los Angeles	9/2/75
West San Fernando Valley.		9/2/75
Whittier	Los Angeles	9/2/75
Florida:		
Kennedy Space Center.	Eastern	9/9/74
Ocala	Eastern	1/21/72
Vera Beach	Eastern	1/13/73
Georgia:		
Rome	Eastern	3/3/72
Waycross	Eastern	6/12/72
Idaho:		
Burley/Rupert	Airwest	12/2/74
Payette (see Ontario, Ore.).		
Illinois:		
Lawrenceville (see Ind.).		
Indiana:		
Lawrenceville, Ill./Vincennes.	Allegheny	5/7/73
Marion	Allegheny	11/27/72
Kentucky:		
Bowling Green	Eastern	9/11/72
Maine:		
Brunswick	Delta	1/1/75
Missouri:		
Moberly	Ozark	4/21/69
Saint Joseph	Frontier	9/1/76
Sedalia	Ozark	8/3/70
Nevada:		
Boulder City	TWA	12/5/74
New Hampshire:		
Berlin	Delta	1/1/78
Laconia	Delta	1/1/75
Portsmouth	Delta	1/1/75
Whitefield	Delta	1/1/75
New York:		
Olean	Allegheny	8/26/74
Poughkeepsie	Allegheny	11/9/73
North Carolina:		
Elizabeth City	Piedmont	6/20/72
Southern Pines/Pinehurst/Aberdeen.	Piedmont	6/20/72
Ohio:		
Lima	Allegheny	10/10/74
Portsmouth	Allegheny	8/9/71
Sandusky	Allegheny	4/4/75
Oklahoma:		
Bartlesville	Frontier	6/3/74
Duncan	Frontier	8/7/72
Muskogee	Frontier	1/8/75

DELETED POINTS ELIGIBLE FOR CONSIDERATION (POINTS DELETED FROM CARRIER CERTIFICATES*)—Continued

[July 1, 1968, through Oct. 24, 1978]

State and point	Carrier	Date of deletion
Oregon:		
Baker	Airwest	4/30/73
Ontario/Payette, Id.	Airwest	4/30/73
Roseburg	Airwest	4/30/73
South Carolina:		
Anderson	Southern	10/4/74
Greenwood	Southern	10/4/74
Tennessee:		
Crossville	Southern	7/11/74
Shelbyville/Tullahoma.	Southern	9/20/74
Texas:		
Big Spring	Texas Int'l.	2/14/75
Borger	Texas Int'l.	4/1/76
College Station/Bryan.	Texas Int'l.	5/20/73
Galveston	Texas Int'l.	12/15/72
Lufkin	Texas Int'l.	5/27/75
Utah:		
Moab	Frontier	11/20/76
Vermont:		
Newport	Delta	1/1/75
Virginia:		
Blacksburg/Radford/Pulaski.	Piedmont	4/13/72
Washington:		
Aberdeen/Hoquiam	Airwest	7/18/74
Olympia	Airwest	10/11/73
Wisconsin:		
Marshfield	North Central	2/5/75
Sheboygan	North Central	2/5/75
Wisconsin Rapids	North Central	2/5/75

*This list does not include communities that lost all air service at their airport as a result of being hyphenated on an air carrier's section 401 certificate.

[FR Doc. 79-31757 Filed 10-12-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 881

[Docket No. R-79-724]

Section 8 Housing Assistance Payments Program—Substantial Rehabilitation

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of interim rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information an interim rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housings and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 881—Section 8 Housing Assistance Payments Program—Substantial Rehabilitation.

This interim rule would completely revise 24 CFR Part 881, governing the Section 8 Substantial Rehabilitation program.

The major changes from the present rules are as follows:

1. The revised regulations would provide new limits on rent, costs and amenities and require cost justification for rents in certain cases.

2. Changes would be made in processing to coordinate Section 8 submissions with the submissions required under the HUD mortgage insurance programs.

3. New relocation requirements would provide more equitable treatment for tenants displaced by rehabilitation activities.

In addition, the language of the revised part has been simplified and the format made more readable.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978).

Issued at Washington, D.C., October 5, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-31872 Filed 10-12-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

31 CFR Ch. II

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Semiannual agenda.

SUMMARY: Pursuant to Executive Order 12044, "Improving Government Regulations," and the Department of the Treasury directive implementing that Executive Order, the Bureau of the Public Debt will continue its review of the General Regulations Governing U.S. Securities, Department of the Treasury Circular No. 300, Fourth Rev., 31 CFR,

Part 306. (Legal authority: 31 U.S.C. 738a, 739, 752, 752a, 753, 754, 754a, and 754b)

This review was undertaken to implement proposals to offer at some future date marketable Treasury bonds and notes in book-entry form and to make other changes to improve the regulations.

FOR FURTHER INFORMATION CONTACT: Charles A. Guerin, Assistant Chief Counsel, Bureau of the Public Debt, Room 309, Washington Building, Washington, D.C. 20226, Telephone: 202-376-0243.

Dated: October 9, 1979.

By Direction of the Secretary of the Treasury.

H. J. Hintgen,

Commissioner of the Public Debt.

[FR Doc. 79-31472 Filed 10-12-79; 8:45 am]

BILLING CODE 4810-40-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1338-3]

Ohio: Proposed Revision To Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. Environmental Protection Agency (USEPA) is proposing a temporary suspension of the October 19, 1979 compliance date established by the federally promulgated implementation plan for sulfur dioxide pending final rulemaking on the proposed revision to that implementation plan for the Cleveland Electric Illuminating Company's Eastlake and Avon Lake Power Plants in Ohio. In no case will the compliance date be later than June 17, 1980. It is the opinion of Region V that this revision to the Ohio State Implementation Plan should be approved. The purpose of this notice is to invite public comment on EPA's proposed revision to that Plan.

DATE: Comments must be received on or before October 30, 1979.

ADDRESSES: Comments should be submitted to Steve Rothblatt, Chief, Air Programs Branch, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket (5A-79-1) for this revision is on file at the above address and at Public Information Reference Unit, Room 2922, USEPA, 401 M Street, S.W., Washington, D.C. 20640. The docket may be inspected and copied during normal business hours.

FOR FURTHER INFORMATION CONTACT: Susanne Karacki, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6030.

SUPPLEMENTARY INFORMATION:

On August 27, 1976 United States Environmental Protection Agency (USEPA) promulgated regulations establishing the state implementation plan (SIP) for the control of sulfur dioxide for the State of Ohio, with emission limitations of 1.43 pounds of sulfur dioxide per million BTU at Cleveland Electric Illuminating Company's (CEI) Eastlake Plant in Lake County, Ohio and 1.15 pounds of sulfur dioxide per million BTU at CEI's Avon Lake Plant in Lorain County. USEPA based the emission limitation on the Urban RAM model (such a model assumes an urban land use pattern). The regulations for both counties contain an October 19, 1979 compliance date and an attainment date of June 17, 1980. (The attainment date is the latest date by which National Ambient Air Quality Standards are to be attained and maintained.) The final compliance date is that date determined by USEPA by which a source will have achieved the emission limitation as expeditiously as practicable. The date of compliance must be attained as expeditiously as practicable but in no case later than the attainment date. In 1978 CEI submitted a SIP revision for the Avon Lake and Eastlake Plants requesting a higher emission limitation with extensive dispersion modeling analysis and monitoring data in support thereof.

On June 12, 1979 USEPA proposed a revision to permit CEI to maintain its current (i.e., status quo) emissions of 6.58 lbs. of SO2 per million BTU for the Eastlake Plant and 6.09 lbs. of SO2 per million BTU for the Avon Lake Plant. USEPA found that due to the lake breeze and fumigation effects neither urban nor rural RAM were appropriate models. The proposed revision does not contain a change in the attainment date from that specified in the regulation. (See 40 CFR 52.1881, 44 FR 33712 (June 12, 1979).)

On August 16, 1979, at the request of several individuals and organizations commenting on the June 12 proposal, USEPA announced an extension of the comment period until October 12, 1979. 44 FR 47959 (August 16, 1979). The extension of the comment period means that USEPA will not be able to complete final rulemaking on the proposed revision before the October 19, 1979 compliance date. As of that date, CEI would have to meet the existing final emission limitation of 1.43 and 1.15 lbs. of SO2 per million BTU for Eastlake and Avon Lake respectively, which USEPA believes would be inequitable. The Agency believes that CEI should not be required to meet the existing emission limitation by the October compliance date and is proposing a temporary suspension of the compliance requirements.

Requiring compliance could cause possible economic disruption due to fuel switching by CEI from high sulfur to low sulfur coal. Fuel switching could affect the employment of miners and could disrupt Ohio coal production. The resulting economic dislocation in the mining areas of Ohio would be unwarranted in light of the fact that compliance with existing limitations would have no benefits if the limitations are revised as proposed. Thus for the above reasons USEPA is proposing a temporary suspension of the Oct. 19 compliance date. Final promulgation of this revision will follow analysis of the comments. Comments are being solicited during this 15 day comment period.

Note.—The USEPA has determined that this document is not a significant regulation and does not require preparation of regulatory analysis under Executive order 12044.

(42 U.S.C. 7410)

John McGuire,

Regional Administrator, Region V.

October 4, 1979.

[FR Doc. 79-31857 Filed 10-11-79; 3:48 pm]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

41 CFR Part 101-40

Proposed Changes to Part 101-40, Transportation and Traffic Management

AGENCY: Transportation and Public Utilities Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: GSA proposes certain changes in existing policies and procedures in the area of transportation and traffic management. This proposed regulation also contains new procedures whereby commercial transportation companies (carriers) that do not provide adequate service to GSA or other civilian executive agencies, after sufficient notice and an opportunity to correct service deficiencies, may be disqualified from participation in that

agency's shipments. The names of the GSA offices are identified where assistance and guidance may be obtained concerning employee travel and relocation allowances and other transportation related problems. These actions are taken to enable GSA to more effectively carry out its responsibilities as the traffic manager for civilian executive agencies.

DATE: Comments must be received by: November 14, 1979.

ADDRESSES: Comments should be addressed to: General Services Administration (TT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: John B. Millington, Traffic Programs Branch, Transportation and Public Utilities Service, General Services Administration, Washington, DC 20406 (703–557–1865).

SUPPLEMENTARY INFORMATION: Background on this proposed rule is as follows:

a. The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471), established the General Services Administration (GSA). Section 201 of the act details GSA's transportation and traffic management responsibilities, which include: (1) Prescribing policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as transportation and traffic management; (2) representing executive agencies in negotiations with carriers and other public utilities and in proceedings invloving carriers or other public utilities before Federal and State regulatory bodies, and (3) providing traffic management services to any Federal agency upon its request.

b. The Transportation and Public Utilities Service (formerly part of the Federal Supply Service, GSA), is responsible for, among other things, providing traffic management guidance to civilian executive agencies including their various components such as GSA, Federal Supply Service. In this connection, Subpart 101–40.1, General Provisions, and Subpart 101–40.3, Freight Rates, Routes, and Services, are revised to clarify, update, or change GSA's transportation and traffic management policies and procedures.

c. A new Subpart 101–40.4, Disqualification and Suspension of Carriers, is added to establish GSA policy and procedures governing the disqualification and suspension of commercial carriers from participation in the movement of freight, household goods, and passengers routed by GSA. Inadequate performance of transportation services by commercial carriers is a continuing problem confronting GSA and other Federal agencies for which GSA routes freight and passenger traffic. Carrier overbooking, improper routing, poor transit times, and excessive damage result in unnecessary inconvenience, program delays, and administrative expense to the Government. Furthermore, in instances involving the movement of household goods, circumstances, such as last-minute cancellations by van carriers and/or late and incomplete deliveries cause undue hardship for transferred Federal employees and their families. This subpart (1) establishes policies and procedures for the disqualification by GSA of carriers that, among other things, repeatedly fail to satisfactorily perform under tariffs, tenders of service, bills of lading, and similar arrangements, (2) contains provisions that ensure that carriers suspended from participation in GSA or agency traffic have the opportunity to present evidence or information opposing the proposed disqualifications as well as the right to appeal adverse determinations; (3) prescribes policies and procedures for the temporary suspension of carriers, suspected, on the basis of adequate evidence, of engaging in criminal, fraudulent, or improper conduct; and (4) contains procedures that permit other civilian executive agencies, including GSA, Federal Supply Service, to temporarily suspend carriers from participating in shipments from that agency for service-related discrepancies.

Explanations of changes are as follows:

a. Section 101–40.000 is revised to more accurately reflect the scope of Part 101–40.

b. Subpart 101–40.1 is amended as follows:

(1) Section 101–40.101–1 is added to specify the GSA offices that will furnish freight and passenger transportation and traffic management assistance to executive agencies.

(2) Section 101—40.101–2 is added to announce a continuing GSA transportation and traffic management liaison program with executive agencies.

(3) Section 101–40.102 is revised to more clearly define the information needed by GSA when representation concerning transportation-related matters is requested in behalf of executive agencies.

(4) Section 101–40.103–1 is revised for clarity.

(5) Section 101–40.103–2 is revised to change the section title and to specify that a U.S.-flag certificated air carriers generally must be used, if available, for international air transportation of freight or passengers;

(6) Section 101–40.105 is amended to delete the phrase "and when their use will result in substantial economies." Since "substantial economies" is subject to an indefinite interpretation.

(7) Section 101–40.106 is revised to indicate the GSA office that shall receive agency transportation reports.

(8) Section 101–40.108 is revised to change the section title and to make minor editorial changes.

(9) Section 101–40.109–1 is amended to specify that the Transportation and Public Utilities Service, GSA, will enter into and establish transportation-related term contracts.

(10) Section 101–40.109–2 is revised to require each agency to contact GSA when they anticipate an office relocation, regardless of dollar amount. GSA will enter into a specific moving contract or other appropriate method for the office relocation.

(11) Section 101–40.109–3 is revised to clarify the mandatory use of GSA contracts for transportation-related services, including office relocations.

(12) Section 101–40.110 is revised to change the section title and to add minority business enterprises as a category of business that shall be considered in Government transportation programs.

(13) Section 101–40.111 is revised to specify the GSA offices that maintain freight and passenger tariffs.

(14) Section 101–40.112 is revised for clarity.

(15) Section 101–40.113 is added to specify GSA's responsibility for prescribing and promulgating employee travel and relocation allowances and to identify the offices that will respond to agency suggestions or questions.

c. Subpart 101–40.3 is revised as follows:

(1) Section 101–40.301 is revised (a) to require agencies to obtain rate or route information from the Transportation and Public Utilities Office, GSA, for (i) surface shipments in excess of 10,000 pounds, including shipments that occupy the full visible capacity of rail cars and intercity motor vehicles, (ii) air shipments in excess of 1,000 pounds, and (iii) all household goods shipments; and (b) to indicate the correct title of GSA Form 420, Freight Rate and Route Request/Response.

(2) Section 101–40.302 is revised for clarity.

(3) Section 101–40.303 is revised to add the "most fuel efficient carrier" as a factor in the standard routing principle. This provision recognizes the impact of the fuel shortage and its relation to the routing of shipments.

(4) Section 101–40.303–1 is revised for clarity.

(5) Section 101–40.303–3 is retitled and new text added to include the most fuel efficient carrier or mode as a criteria for carrier selection.

(6) Section 101–40.303–4 is added to include the most fuel efficient carrier as a consideration for equitable distribution of freight among carriers.

(7) Section 101–40.304 is revised to indicate the Department of Transportation Hazardous Materials Regulations that shall be followed when shipments involve hazardous materials and to specify the GSA office that will provide freight descriptions.

(8) Section 101–40.305.1 is revised for clarity.

(9) Section 101–40.305–2 is amended to change the title of the section and to indicate the detailed information required by GSA to make cost analyses.

(10) Section 101–40.305–3 is amended to prescribe the conditions under which civilian executive agencies may negotiate with commercial carriers for transportation services.

(11) Sections 101–40.305–4 and 101–40.305–5 are reserved.

(12) Section 101–40.306 is amended to include relevant background information concerning rate tenders.

(13) Section 101–40.306–1 is revised to change the section heading and to make other editorial changes.

(14) Section 101–40.306–2 is revised by certain editorial changes.

(15) Section 101–40.306–3 is revised to reduce the number of rate tender copies required by GSA and to correct the designation of the GSA office that receives copies.

(16) Section 101–40.306–4 is reserved.

(17) Section 101–40.307, 101–40.307–1, and 101–40.307–2 are reserved.

d. Subpart 101–40.4 is added. (See the background paragraph for details).

e. Subpart 101–40.49 is amended as follows:

Section 101–40.4906–1 is revised to correct the title of and to illustrate GSA Form 420, Freight Rate and Route Request/Response, September 1977 edition.

Effects on other regulations are as follows:

a. *Centralized Household Goods Traffic Management.* The provisions of FPMR Temporary Regulation A–12 (43 FR 5436, February 8, 1978) will be incorporated into this proposed rule when it becomes final. Agencies were given the opportunity to comment on this temporary regulation. Their comments, as well as other changes in GSA policies and operating procedures, will be included as necessary.

b. *Rate Tenders to the Government.* In 43 FR 51817, November 7, 1978, GSA published a proposed rule entitled, "Rate Tenders to the Government," to amend FPMR 101–40.4906–2 with a revised format, "Uniform Tender of Rates and/or Charges for Transportation Services." Agency and commercial carrier comments on this proposed rule were requested and received. Changes to the rate tender format will be made as necessary. The new rate tender format will also be included when this proposed rule become final.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and therefore, is not significant for the purpose of Executive Order 12044. Accordingly, it is proposed to amend 41 CFR Part 101–40 as follows:

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

1. Section 101–40.000 is revised as follows:

§ 101–40.000 Scope of part.

This part prescribes regulations that apply to the freight and passenger transportation and traffic management activities of the civilian executive agencies. It also covers arrangements for transportation and related services by bill of lading type commitments. These regulations are designed to ensure that all transportation and traffic management activities will be carried out on the basis most advantageous to the Government in terms of economy, efficiency, and service.

Subpart 101–40.1—General Provisions

2. The table of contents for Subpart 101–40.1 is amended as follows:

Sec.

3. Sections 101–40.101–1 and 101–40.101–2 are added to read as follows:

§ 101–40.101 Transportation assistance.

§ 101–40.101–1 Freight and passenger transportation management assistance.

Executive agencies in the Metropolitan Washington, DC area without transportation officers or those in need of assistance concerning freight and passenger transportation management matters shall request assistance from the Transportation and Public Utilities Service (WTT), General Services Administration, Washington, DC 20407. Agencies located outside the Metropolitan Washington, D.C., area shall request assistance from the Transportation and Public Utilities Service, Transportation and Travel Management Division, located at the GSA regional office that normally provides supply support to the requesting agency.

101–40.101–2 GSA transportation and traffic management liaison.

GSA will maintain a continuing transportation and traffic management liaison program with the executive agencies to assist in the establishment, improvement, and maintenance of effective freight and passenger transportation and traffic management policies, practices, and procedures to meet executive agency program requirements.

4. Section 101–40.102 is revised as follows:

§ 101–40.102 Representation before regulatory bodies.

GSA, in behalf of executive agencies, will as it considers appropriate, institute formal or informal actions before Federal or State regulatory bodies with respect to carriers' tariffs, rates, or service matters. (See also § 101–40.305–1). Executive agencies shall submit their requests and recommendations for such actions to the appropriate GSA office specified in § 101–40.101–1. Agency requests for GSA representation shall be accompanied by all available supporting data that includes, but is not limited to such items as the following:

(a) The nature of the articles involved, including the exact commodity description, national stock number (NSN); if assigned, and estimated value of the articles, if known;

(b) The manner in which the commodity will be prepared for shipment; for example, boxes, crates, bundles, loose, set up or knocked down, or containerized or palletized unit loads;

(c) The points between which, or the geographic area within which, the material is expected to move; the type of

transportation sevice needed; and the expected duration of the proposed shipments;

(d) The approximate volume or average monthly tonnage of traffic. (Data submitted should show the total number, total weight, and average weight of carload, truckload, less-than-carload, and less-than-truckload, shipments to and from each point where service is required);

(e) Any characteristics of the proposed shipments that require special carrier equipment or services; for example, outsized items, refrigerated cargo, high value material, or hazardous materials, exclusive use, expedited service, extra labor, and inside pickup and/or delivery services;

(f) Any local conditions at the actual or tentative origins or destinations which would affect transportation; for example, if the Government installation or activity is not served directly by rail carriers, show the distance to the motor carrier's terminal or the railroad public team track loading or unloading facilities;

(g) Names of carriers presently serving each origin and/or destination;

(h) Any cost or service difficulties experienced with existing carriers and a statement explaining efforts made to correct the deficiencies or to resolve problems. (Copies of correspondence or other documents indicating failure to provide economic relief an/or satisfactory service should be attached);

(i) A list of existing carriers' rates or charges for the services involved, including references to the applicable tariffs or Government rate tenders. (Quotations under section 10721, 49 U.S.C. 10721, formerly section 22, of the Interstate Commerce Act;

(j) A statement indicating whether the desired carrier services require permanent, temporary, or limited operating authority;

(k) The tentative starting and ending dates of the proposed shipment(s);

(l) Details of any special request from a carrier for support of an application including any docket number, place and time of hearing(s), and a copy of the carrier application, if available; and.

(m) The names of any individuals qualified to testify as to the foregoing information and as to other factual matters relating thereto.

5. Sections 101–40.103–1 and 101–40.103–2 are revised to read as follows:

§ 101-40.103 Selection of carriers.

§ 101-40.103-1 Domestic transportation.

Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation service. However, where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are: (a) where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and (b) where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation. (See also § 101–40.303–1.)

§ 101-40.103-2 International transportation.

(See § 1–1.323 of this title and 4 CFR 52.2 for a certificate required in nonuse of U.S.-flag vessels or U.S.-flag certificated air carriers.)

(a) *U.S.-flag ocean carriers.* Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)), concerning the use of privately owned U.S.-flag vessels. (See also § 5A–19.108 of this title for implementing policies and procedures followed by the General Services Administration.)

(b) *U.S.-flag certificated air carriers.* Arrangements for international air transportation services shall be made in accordance with the provisions of section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, dated January 3, 1975 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that service by these carriers is available.

4. Section 101–40.104 is republished without change.

§ 101-40.104 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in § 1–19.107 of this title.

6. Section 101–40.105 is revised as follows:

§ 101-40.105 Use of Government owned transportation equipment.

Generally, the preferred method of transporting property for the Government is though use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available and are not being fully utilized. They may be used for such purposes as local transfer of property, pickup or delivery services which are not performed by the commercial carriers in connection with the line-haul transportation; transportation of property to meet emergencies; and accomplishment of program objectives which cannot be attained through use of commercial carriers.

7. Section 101–40.106 is revised as follows:

§ 101-40.106 Reports.

Each civilian executive agency shall submit reports concerning its transportation procedures, practices, and operations to the Transportation and Public Utilities Service (TT), General Services Administration, Washington, DC 20406, whenever so requested or as prescribed by this Part 101–40. The format of these reports shall be as prescribed in the individual sections of this subpart or as provided in each specific request.

8. Section 101–40.108 is revised as follows:

§ 101-40.108 Transportation seminars and workshops.

GSA will, from time to time, conduct transportation seminars and workshops for the benefit of executive agency personnel assigned functions relating to the movement of persons or materials. The objective of this training is to broaden traffic management knowledge and experience within the agency and to assist its personnel in making improvements leading to greater efficiency and economy of operations.

9. Section 101–40.109 is retitled and sections 101–40.109–1, 101–40.109–2 and 101–40.109–3 are revised as follows:

§ 101-40.109 Availability of transportation-related contracts and agreements.

§ 101-40.109-1 Miscellaneous transportation-related contracts and agreements.

(a) The Transportation and Public Utilities Service, General Services Adminstration, will, as considered necessary, enter into agreements or contracts for transportation and related servcies, including but not limited to stevedoring; passenger charters; storage, drayage, packing; marking; ocean freight forwarding, accessorial services, demurrage and weighing. (See 101–41.304–2 for the use of commercial forms and procedures in lieu of Government bills of lading.) These contracts and agreements will be made for an in behalf of all civilian executive agencies.

(b) The availability of these contracts and agreements will be announced through GSA bulletins which will outline the specific contractural services and the terms of the agreements. After distribution of these bulletins, GSA will furnish copies of the contracts and agreements to agencies upon request.

§ 101-40.109-2 Office relocation contracts.

(a) In accordance with the provisions of Part 101-17, Assignment and Utilization of Space, prior approval is required from the Public Buildings Service, GSA, for agencies desiring to relocate office space which has been assigned to GSA.

(b) The Transportation and Public Utilities Service, GSA, offices specified in § 101-40.301(b) will enter into term contracts for office relocations, estimated to cost $5,000 or less, in cities where it is determined that such contracts are warranted. On single office moves exceeding $5,000, GSA will arrange to contract for the required moving services under competitive bidding procedures. The availability of term contracts for office relocations will be announced through GSA bulletins as indicated in § 101-40.109-1(b).

(c) In cities where term contracts are not available and where a civilian executive agency anticipates an office relocation estimated to cost $500 or more, GSA shall enter into, in behalf of the agency, a specific relocation contract or other appropriate relocation arrangement. As soon as possible prior to the move, preferably 90 calendar days, the appropriate GSA office specified in § 101-40.301(b) shall be contacted and furnished with pertinent information concerning the proposed relocation such as, the origin, destination, moving date, property to be moved, and the agency relocation coordinator.

Note.—Arrangements for office relocations expected to cost less than $500 will be handled by the moving agency.

(d) Whether an office relocation is made under a GSA term moving contract or under a specific contract entered into by GSA in behalf of an individual agency, the agency being relocated shall make operational arrangements direct with the moving contractor. These arrangements shall include: (1) Issuing the purchase order or placing the work order; (2) arranging for direct billing; (3) making all operational arrangements; (4) supervising the actual moving; (5) processing loss and damage claims, if any; (6) providing certification on the contractor's invoices; and (7) processing the involice for direct payment to the contractor. The GSA contracting office shall be notified upon completion of the relocation.

§ 101-40.109-3 Mandatory use of transportation-related contracts and agreements.

(a) When a contract or agreement for transportation-related services, including office relocations, is awarded in response to an agency's specific request, the use of the contract or agreement is mandatory only upon that requesting agency.

(b) When term contracts or agreements for transportation-related services, including office relocations, are entered into and awarded by GSA for use "as required," the term contract or agreement is mandatory upon all executive agencies; however, exceptions to the mandatory use of term contracts or agreements may be granted by the appropriate GSA office cited in § 101-40.301(b).

10. Section 101-40.110 is retitled and revised as follows:

§ 101-40.110 Assistance to economically disadvantaged transportation businesses.

§ 101-40.110-1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses as set forth in Subpart 1-1.7 of this title, executive agencies shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services, such as packing and crating, loading and unloading, and local drayage.

§ 101-40.110-2 Minority business enterprises.

Consistent with the policies of the Government stated in Subpart 1-1.13 of this title, minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts. Agencies shall identify transportation-related minority enterprises and encourage them to provide services that will support the agencies transportation requirements. The GSA offices cited in § 101-40.301(b) may be contacted for assistance, if needed.

11. Section 101-40.111 is revised as follows:

§ 101-40.111 Maintenance of tariff files.

(a) The Transportation and Public Utilities Services, National Capital Region (WTT), General Services Administration, Washington, DC 20407, shall maintain a master file of carrier tariffs covering all modes and methods of transportation commonly used by executive agencies located in the Metropolitan Washington, D.C., area. Each of the 11 other Transportation and Public Utilities Service, GSA regional offices will maintain a tariff file sufficient to meet the normal transportation requirement of the executive agencies located within the area of responsibility of the respective GSA regional office.

(b) Executive agencies may maintain only those tariffs necessary to meet their routine operational requirements. Agencies may use GSA tariff files to meet unsual or abnormal transportation needs; or, alternatively, may request GSA to furnish rates, freight or passenger routings, or other tariff information (See § 101-40.301 for use of GSA-furnished rates and routes.)

12. Section 101-40.112 is revised as follows:

§ 101-40.112 Transportation factors in the location of Government facilities.

(a) Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities.

(b) If changes in the location, relocation or deactivation of Government installations or facilities are contemplated and will result in significant changes in the movement of property, executive agencies shall use the traffic management services of GSA to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

13. Section 101-40.113 is added as follows:

§ 101-40.113 Employee travel and relocation allowances.

The General Services Administration has the responsibility to prescribe and promulgate regulations governing employee travel and relocation allowances. These allowances are published in the Federal Travel Regulations and the Commuted Rate Schedule for Transportation of Household Goods. These regulations are incorporated by reference into Part 101-7. Amendments are made to these regulations from time to time as conditions warrant. Suggestions or questions concerning employee travel and relocation allowances may be addressed to the General Services Administration offices specified in § 101-40.301(b).

Subpart 101-40.3—Freight Rates, Routes, and Services

14. The table of contents for Subpart 101-40.3 is amended as follows:

15. Section 101-40.301 is revised as follows:

§ 101-40.301 GSA Rate and routing services.

(a) Executive agencies shall obtain rate and/or routing information from the appropriate GSA transportation office specified in § 101-40.301(b) when they have freight shipments that fall within the following categories:

Shipment Category and Shipment Weight

(1) Surface shipments (rail, motor, water) (See 101-40.305-3(a) for exemption)—10,000 pounds and over (including bulky shipments that occupy the full visible capacity of a railcar or intercity motor vehicle)

(2) Air shipments—1,000 pounds and over (3) Household goods shipments—All shipments, regardless of weight.

On shipments that are rated or routed by GSA, agencies shall furnish the necessary details concerning the shipment as far in advance of the proposed shipping date as possible. GSA Form 420,[1] Freight Rate and Route Request/Response (see § 101-40.4906-1) may be used for this purpose.

(b) Agencies within the Metropolitan Washington, DC area shall submit requests to the Transportation and Public Utilities Service (WTT), General Services Administration, Washington, DC 20407. Agencies outside the Washington, DC Metropolitan area shall request rate and route information form the Transportation and Public Utilities Service office located at the GSA region that normally provides supply support to the requesting agency. Agencies may telephone urgent requests to GSA. Replies will be made by telephone and confirmed upon request, by the use of GSA Form 420.

(c) Agencies are encouraged, but not required to request GSA-furnished rate or route information for their freight shipments that are less than the shipment weights specified in § 101-40.301(a).

16. Section 101-40.302 is revised as follows:

§ 101-40.302 Standard routing principle.

Shipments shall be routed using the mode of transportation, or individual carrier or carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

17. Section 101-40.303 is retitled and revised as follows:

§ 101-40.303 Application of the standard routing principle.

In the application of the standard routing principle, the major factors to be considered are, in the order of their importance, satisfactory carrier service, overall cost considerations, most fuel efficient carrier/mode, and equitable distribution of traffic among carriers.

18. Section 101-40.303-1 is revised as follows:

§ 101-40.303-1 Service requirements.

The following factors shall be considered in determining whether a carrier or mode of transportation can meet an agency's transportation service requirements for each individual shipment:

(a) Availability and suitability of carrier equipment;

(b) Carrier terminal facilities at origin and destination;

(c) Pickup and delivery service, if required;

(d) Availability of required or accessorial and special services, if needed;

(e) Estimated time in transit;

(f) Record of past performance of the carrier; and

(g) Availability and suitability of transit privileges.

19. Section 101-40.303-3 is retitled and new text added as follows:

§ 101-40.303-3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of carriers to provide the most direct service to the destination points.

20. Section 101-40.303-4 is added as follows:

§ 101-40.303-4 Equitable distribution of traffic among carriers.

When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost and all modes are equally the most fuel efficient, the traffic shall be distributed as equally as practicable among the modes and among the carriers within the modes.

21. Section 101-40.304 is revised as follows:

§ 101-40.304 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as "Foamite" or "Formica" or general terms such as "vehicles," "furniture," or "Government supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulations, 49 CFR Parts 170 through 177.

(c) Agency requests for specific freight descriptions shall be submitted to the appropriate Transportation and Public Services Utilities Service office as listed in § 101-40.301(b).

22. Section 101-40.305 is retitled as follows:

§ 101-40.305 Transportation negotiations.

* * * * *

23. Sections 101-40.305-1, 101-40.305-2, and 101-40.305-3 are revised as follows:

§ 101-40.305-1 Negotiations by GSA.

Except as provided in § 101-40.305-3, GSA will conduct all transportation negotiations for civilian executive agencies to establish or modify rates, fares, charges, ratings, and services and rules or regulations pertaining thereto.

§ 101-40.305-2 Cost analysis required on substantial movements.

Except as provided in § 101-40.305-3, civilian executive agencies shall submit

[1] Form filed as part of original document.

to the appropriate GSA regional Transportation and Public Utilities Service office as listed in § 101–40.301(b), complete information concerning planned transportation so that a cost analysis may be made to determine whether negotiation is appropriate. This information should be submitted as far in advance of the planned transportation as possible. The information supplied shall be detailed and include but not be limited to the number of individuals traveling, property characteristics (i.e., those requiring shipment in bags, boxes or bulk; hazardous properties; weight; dimension; density; value; and susceptibility to damage), origin, destination, number of shipments, weight per shipment, and the planned shipping schedule. The provisions of this subsection shall apply to all transportation payable by the Government.

§ 101–40.305–3 Negotiations by other executive agencies.

Except for the transportation of an employee's personal household goods and the relocation of offices, the civilian executive agencies are authorized to initiate and conduct negotiations on their own behalf under the following conditions:

(a) When the total planned quantity of property to be shipped does not exceed 100,000 pounds.

Note.—Agencies making surface shipments under agency-negotiated rates are exempt from obtaining GSA rate and routing information as required in § 101–40.301(a)(1).

(b) When planned group travel, under Standard Form 1169, U.S. Government Transportation Request, consists of fewer than 25 individuals traveling at one time.

(c) When the planned shipment is less than that which would require the assessment of carload or truckload rates.

(d) When approval to negotiate is granted by General Services Administration (TT), Washington, D.C. 20406, or the appropriate GSA regional Transportation and Public Utilities Office.

Note.—Nothing in this § 101–40.305–3 prohibits civilian executive agencies from seeking GSA assistance in negotiations.

§§ 101–40.305–4 and 101–40.305–5 [Reserved].

24. Sections 101–40.305–4 and 101–40.305–5 are reserved.

25. Section 101–40.306 is revised as follows:

§ 101–40.306 Rate tenders to the Government.

Under the provisions of section 10721 (formerly section 22) of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rate tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

26. Sections 101–40.306–1, 101–40.306–2, 101–40.306–3 are revised as follows:

§ 101–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing and which apply to shipments of the U.S. Government shall be considered for use by executive agencies. Carriers should be encouraged to use the format "Uniform Tender of Rates and/or Charges for Transportation Services" illustrated in § 101–40.4906–2 when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government; therefore, explicit terms and conditions are necessary to preclude misunderstandings by the parties to the rate tender.

§ 101–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

"Transportation hereunder is for the (name the specific agency, such as the General Services Administration) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government."

(b) When a rate tender is used for transportation furnished under a cost-reimburseable contract, the following endorsement shall be used on covering commercial bills of lading:

"Transportation hereunder is for the (name the specific agency, such as the General Services Administration) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number ( ). This may be confirmed by contacting the agency representative at (name and telephone number)." (See 332 ICC 161.)

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification; such as, "Section 10721 tender, ABC Transportation Company, ICC No. 374." In addition, if commercial bills of lading are used, they shall be endorsed as specified in §§ 101–40.306–2(a) or 101–40.306–2(b), as necessary.

§ 101–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WTT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

§§ 101–40.307, 101–40.307–1, and 101–40.307–2 [Reserved].

27. Sections 101–40.307, 101–40.307–1, and 101–40.307–2 are reserved.

Subpart 101–40.4—Disqualification and Suspension of Carriers

28. The table of contents for Subpart 101–40.4 and §§ 101–40.400 thru 101–40.404–2 are added as follows:

§ 101–40.400 Scope of subpart.

This subpart prescribes policies and procedures governing the disqualification and suspension of carriers transporting freight, household goods, or passengers routed by GSA.

§ 101-40.401 General.

Disqualification and suspension are measures which GSA may take to exclude carriers from participation, for temporary periods of time, in the movement of GSA shipments under tariffs, tenders of service, commercial or Government bills of lading, and similar arrangements. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 101-40.402 Administrative disqualification of a carrier.

(a) GSA may, in the public interest, disqualify a carrier from participation in traffic routed by GSA for any of the causes and under any of the conditions set forth in § 101-40.402-1.

(b) GSA, TPUS regional offices and other civilian executive agency may place a carrier in a temporary nonuse status for a maximum period of 30 calendar days as provided in § 101-40.404 if its experience with a particular carrier indicates a need for this action.

§ 101-40.402-1 Causes and conditions for disqualification.

The causes and conditions for which a carrier may be disqualified by GSA are set forth in paragraphs (a) through (g) of this § 101-40.402-1.

(a) Willful violations of the terms of the tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties.

(b) A record of failure to perform or of unsatisfactory performance in accordance with the terms of tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties. Failure to perform or unsatisfactory performance includes but is not limited to the following:

(1) Failure to meet requested packing/pickup dates;

(2) Deliveries exceeding time-in-transit standards when established by the Government; e.g., the General Services Administration household goods tender of service and transit times established for shipments from Federal Supply Service supply distribution facilities;

(3) Failure to meet required delivery dates on Government or commercial bills of lading;

(4) Failure to furnish adequate equipment;

(5) Use of inadequate or unsafe equipment;

(6) Violation of Department of Transportation (DOT) Hazardous Materials regulations;

(7) Mishandling of freight; e.g., damaged or missing transportation seals or improper loading, blocking, packing, or bracing;

(8) Excessive loss or damage;

(9) Improper routing;

(10) Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;

(11) Failure to maintain insurance coverage;

(12) Expiration of carrier exemption, permit, or authority;

(13) Failure to promptly settle claims; and

(14) Repeated failure to comply with the regulations of DOT, the Interstate Commerce Commission, or State and local governments; or repeated failure to comply with any other applicable Government regulations.

(c) A conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or as an incident to performing such contract or subcontract;

(d) A conviction under the Organized Crime Control Act of 1970 or a conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a carrier of Government property.

(e) A conviction under the Federal antitrust statutes arising out of the submission of bids or proposals.

(f) Inclusion in a list issued by the Comptroller General (as provided in Part 5, section 56(b) of the regulations issued by the Secretary of Labor under the authority of Reorganization Plan 14 of 1950) as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provisions of applicable regulations or statutes;

(g) A finding by the Director, Office of Federal Contract Compliance, Department of Labor, of noncompliance with the provisions of the Equal Employment Opportunity Clause; and

(h) Any other cause or condition of a serious or compelling nature affecting the present responsibility as a carrier of Government property.

§ 101-40.402-2 Disqualification procedures.

(a) *Disqualification for periods of 90 calendar days or less.*

(1) *Determining official.* A determination to disqualify a carrier for 90 calendar days or less will be made by the following GSA official: Director, Transportation Management Division, Office of Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406.

(2) *Notice of proposed disqualification.* GSA will, by certified mail, with return receipt requested, forward to the carrier and, if appropriate, to the carrier's known affiliates, a notice of proposed disqualification which will state:

(i) That disqualification is being considered;

(ii) The reasons that disqualification is being considered;

(iii) The proposed period of disqualification;

(iv) The period of time afforded to the carrier to present information refuting the proposed disqualification (This period of time will be limited to 10 calendar days from the date the carrier receives the notice. The carrier may, within that 10 calendar day period request the Director, Transportation Management Division, to grant additional time for presenting refuted information.); and

(v) That the carrier will not be used for GSA shipments pending a disqualification determination.

(3) *Carrier presentation of information.* The carrier may present information refuting the proposed disqualification in writing, in person, or through representation, to the Director, Transportation Management Division.

(4) *Disqualification determination.*

(i) If, in accordance with the provisions of this § 101-40.402-2(a), the carrier presents data refuting the proposed disqualification, the determination whether to disqualify the carrier will be made within 20 calendar days after receipt of that data.

(ii) If, within the time period specified in the initial notice of proposed disqualification, the carrier neither refutes the information nor requests additional time to present this information, the determination whether to disqualify the carrier will be made within 20 calendar days from the date the carrier receives the initial notice of proposed disqualification.

(5) *Carrier notification of disqualification determination.* GSA will notify the carrier by certified mail, with return receipt requested, whether

or not the disqualification will apply. If the disqualification applies, the notice will specify the reasons for the disqualification as well as the period of disqualification.

(6) *Period of disqualification.* A period of disqualification for 90 calendar days or less shall begin on the first day following the date on which the carrier receives the notice of proposed disqualification.

(7) *Request for review of determination.* A carrier may request that a review of a determination to disqualify for 90 calendar days or less be made by the Assistant Commissioner, Office of Transportation and Travel Management, Transportation and Public Utilities Service, GSA. The request for review shall be forwarded to the General Services Administration (TT), Washington, DC 20406, within 10 calendar days after receipt of the disqualification notice. The Assistant Commissioner, Office of Transportation and Travel Management shall issue a determination within 20 calendar days after receipt of the carrier's request. The carrier will be notified of this determination by certified mail with return receipt requested. The determination of the Assistant Commissioner, Office of Transportation and Travel Management shall be administratively final.

(b) *Disqualification for periods of more than 90 calendar days.*

(1) *Determining official.* A determination to disqualify a carrier, for more than 90 calendar days will be made by the following GSA official: Assistant Commissioner, Office of Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TT), Washington, DC 20406.

(2) *Notice of proposed disqualification.* GSA will, by certified mail, with return receipt requested, forward to the carrier and, if appropriate, to the carrier's known affiliates, a notice of proposed disqualification which will state:

(i) That disqualification is being considered;

(ii) The reasons that disqualification is being considered;

(iii) The proposed period of disqualification;

(iv) The period of time afforded to the carrier to present information refuting the proposed disqualification (This period of time will be limited to 20 calendar days from the date the carrier receives the notice. The carrier may, within that 20 calendar day period request the Assistant Commissioner, Office of Transportation and Travel Management to grant additional time for presenting refuted information.); and

(v) That the carrier will not be used for GSA shipments pending disqualification determination.

(3) *Carrier presentation of information.* The carrier may present information refuting the proposed disqualification in writing, in person, or through representation, to the Assistant Commissioner, Office of Transportation and Travel Management.

(4) *Disqualification determination.*

(i) If, in accordance with the provisions of this § 101–40.402–2(b), the carrier presents data refuting the proposed disqualification, the determination whether to disqualify the carrier will be made within 30 calendar days after receipt of that data.

(ii) If, within the time period specified in the notice of proposed disqualification, the carrier neither refutes the information nor requests additional time to present this information, the determination whether to disqualify the carrier will be made within 30 calendar days from the date the carrier receives the notice of proposed disqualification.

(5) *Carrier notification of disqualification determination.* GSA will notify the carrier by certified mail, with return receipt requested, whether or not the disqualification will apply. If the disqualification applies, the notice will specify the reasons for the disqualification as well as the period of disqualification.

(6) *Period of disqualification.*

(i) A period of disqualification for more than 90 calendar days shall begin on the first day following the date on which the carrier receives the notice of proposed disqualification.

(ii) A disqualification under this § 101–40.402–2(b) for causes other than failure to comply with the provisions of the Equal Employment Opportunity clause will be for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance. As a general rule, a period of disqualification will not exceed 3 years. If determined necessary to extend a period of disqualification, GSA will forward a new notice of proposed disqualification in accordance with § 101–40.402–2(b)(2) on or about the expiration date of the disqualification period. Notifications of extended periods of disqualifications will be handled in the same manner as initial periods of disqualifications.

(iii) A disqualification under this § 101–40.402–2(b) for failure to comply with the provisions of the Equal Employment Opportunity clause will generally continue until removed by the Director, Office of Federal Contract Compliance, Department of Labor.

(7) *Request for review of determination.* A carrier may request that a review of a determination to disqualify for more than 90 calendar days be made by the Commissioner, Transportation and Public Utilities Service (TPUS), GSA. The request for review shall be forwarded to the General Services Administration (T), Washington, DC 20406, within 10 calendar days after receipt of the disqualification notice. The Commissioner, TPUS, shall issue a determination within 30 calendar days after receipt of the carrier's request. The carrier will be notified of this determination by certified mail. The determination of the Commissioner, TPUS, shall be administratively final.

(8) *Application for relief from disqualification.* Except as precluded by statute, GSA may terminate or reduce the period of time of a disqualification on the basis of appropriate evidence that the causes and conditions for which the disqualification was imposed have been eliminated or corrected. A carrier may apply to the Assistant Commissioner, Office of Transportation and Travel Management, for the granting of relief from a disqualification at any time after receipt of the notice of disqualification. The application shall fully document the reasons for the requested relief, which may include but are not limited to the discovery of new material evidence, the reversal of a conviction, or the bona fide change of ownership or management. The Assistant Commissioner, Office of Transportation and Travel Management shall review the application and supporting documentation and notify the carrier of a determination by certified mail with return receipt requested.

§ 101–40.403 Suspension of a carrier.

Suspension is an action that GSA may take against a carrier which is suspected, on the basis of adequate evidence, of engaging in criminal, fraudulent, or seriously improper conduct. In determining whether the evidence merits invoking a suspension, GSA will consider the creditability of the evidence available, the existence or absence of corroboration as to important allegations, and the inferences which may be drawn from the existence or absence of affirmative facts. This assessment will include an examination of basic documents, such as contracts, inspection reports, and correspondence. A suspension may be modified whenever GSA determines that it is in the best interest of the Government to do so.

§ 101-40.403-1 Causes and conditions for suspension.

GSA may, in the interest of the Government, suspend a carrier from participation in traffic routed by GSA for the causes and under the conditions set forth in this § 101-40.403-1:

(a) Suspicion, based upon adequate evidence, of the following:

(1) Commission of fraud or a criminal offense either as an incident to obtaining or attempting to obtain a public contract or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or

(3) Commission of an act in violation of the Organized Crime Control Act of 1970 or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a carrier of Government property.

(b) Any cause of a serious and compelling nature affecting the responsibility or reliability of a carrier which, in the determination of GSA, warrants suspension. However, suspensions relating to matters involving the Equal Employment Opportunity clause shall be handled in accordance with regulations prescribed by the Secretary of Labor.

§ 101-40.403-2 Period of suspension.

Suspension is for a temporary period pending the completion of an investigation and any subsequent legal proceedings. If prosecution has not been initiated by the Department of Justice (DOJ) within 12 months from the issue date of a notice of suspension (see § 101-40.403-4), GSA will terminate the suspension unless DOJ requests continuance of the suspension. (GSA will notify DOJ of a proposed suspension termination 30 calendar days before expiration of the 12-month period.) If a continuation is requested, the suspension may remain in effect for an additional 6 months. However, no suspension shall continue beyond 18 months unless prosecution has been initiated within that period. If prosecution has been initiated, a suspension may continue until the legal proceedings are completed.

§ 101-40.403-3 Restrictions during period of suspension.

A suspended carrier will not be permitted to transport freight or passengers during the period of suspension, unless otherwise determined by GSA to be in the best interest of the Government.

§ 101-40.403-4 Notice of suspension.

A carrier that has been suspended by GSA will, by certified mail, with return receipt requested, be furnished with a notice of suspension issued by the following GSA official: Assistant Commissioner, Office of Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TT), Washington, DC 20406. The notice of suspension shall state that:

(a) The suspension is based on (1) an outstanding indictment or (2) adequate evidence that the carrier has committed irregularities which seriously reflect on the propriety of further dealings of the carrier with the Goverment (The notice will identify the indictment or describe the nature of the irregularities in general terms, without disclosing the Government's evidence.);

(b) The suspension is for a temporary period pending the completion of an investigation and any subsequent legal proceedings; and

(c) The carrier will be excluded from participating in the movement of GSA freight and passengers, unless otherwise determined by the Assistant Commissioner, Office of Transportation and Travel Management, to be in the best interest of the Government.

§ 101-40.403-5 Review of suspension.

(a) *Carrier request for review.* A carrier suspended by GSA may request that a review of the suspension action by made by the Commissioner, Transportation and Public Utilities Service, (TPUS), GSA, and that the carrier be provided an opportunity to present information refuting the suspension to the Commissioner, in person, in writing, or through representation. The request for review shall be forwarded to the General Services Administration (T), Washington, D.C. 20406.

(b) *Coordination with other Federal agencies.* Upon receipt of a request for a review, GSA will seek the advice of other interested Federal agencies as set forth below.

(1) *Coordination with Department of Justice (DOJ).* In all instances, GSA will solicit the formal advice of DOJ concerning the possible impact that the release of evidence could have on possible civil or criminal action against the carrier.

(2) *Coordination with the Department of Labor (DOL).* If the suspension is based upon violations of labor standards subject to legal proceedings before administrative law judges of DOL, GSA will solicit the formal advice of DOL concerning the possible impact that the release of evidence could have on possible DOL proceedings against the carrier.

(c) *Response to carrier request for review.* GSA's decision on whether to grant the requested review will be based on the advice received from DOJ or DOL as to the possible effects of the release or disclosure of Government evidence. The Commissioner, TPUS, GSA, shall notify the carrier of this decision by certified mail with return receipt requested. If a review is granted, GSA will, as necessary, determine the extent of the review and the conditions under which the review will be conducted and the carrier will be so notified. If a review is denied, the carrier will be notified that the release or disclosure of evidence which would occur as the result of a review would be prejudicial to the interests of the Government but that the carrier may, nevertheless, present any information refuting the suspension action to the Commissioner, TPUS, GSA.

(d) *GSA determination and carrier notification.* GSA will determine whether to continue or terminate the suspension following a review of the suspension action and/or consideration of information presented by the carrier to refute the suspension. The Commissioner, TPUS, GSA, shall notify the carrier of this determination by certified mail with return receipt requested.

§ 101-40.404 Temporary nonuse of carriers.

Civilian executive agencies, including GSA, TPUS offices, may place carriers that serve the agency in a temporary nonuse status for a maximum period of 30 calendar days when they do not show a willingness or ability to meet the transportation service requirements of the agency. (Consecutive 30 calendar day nonuse periods shall require advance approval by GSA and shall not be used to avoid the procedures and requirements of § 101-40.402.) An agency shall not apply temporary nonuse actions against a carrier for a violation made by that same carrier in serving another agency. Compliance with applicable laws and regulations which preclude arbitrary and capricious actions, among other things, rests upon the agency placing a carrier in this status.

§ 101-40.404-1 Agency responsibility.

(a) Agencies placing a particular carrier in a temporary nonuse status shall fully document that action with specific instances of carrier

nonperformance which may include but are not limited to the causes and conditions set forth in § 101–40.402–1. The documentation shall also include information showing that the carrier was provided with prior notices of service deficiencies and was afforded a reasonable opportunity to correct or explain these deficiencies.

(b) The carrier shall, by certified mail, with return receipt requested, be notified by the agency concerning the 30 calendar day temporary nonuse status. This notice shall include:

(i) The starting and ending dates of the nonuse period;

(ii) The reasons for placing the carrier in a temporary nonuse status;

(iii) The corrective actions that may be taken by the carrier for reinstatement;

(iv) The time period of 10 calendar days during which the carrier may present information refuting the temporary nonuse status; and

(v) A notice that the carrier shall not be used by the agency pending a temporary nonuse determination. (An agency determination whether to place a carrier in a nonuse status shall be made within 20 calendar days from the date the carrier receives the initial notice; however, if the carrier presents information refuting the agency's action, the date of the latter action would apply.)

(c) The agency shall review the carrier's reply if any, and shall prepare a response according to the facts presented. Except for the GSA review as provided in § 101–40.404–2, the agency's decision is administratively final.

(d) Copies of the carrier notification of temporary nonuse status and supporting documentation shall be forwarded immediately to GSA. The agency shall also furnish a recommendation for further disqualification, if considered necessary. The notice shall be addressed to: Director, Transportation Management Division, Office of Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406.

§ 101–40.404–2 General Services Administration review.

Upon receipt of the agency's recommendations and supporting documentation, GSA will determine if the data is adequate and sufficient to support the agency's temporary nonuse or diqualification of the carrier. GSA will advise the agency, based on the review of the data received, whether:

(a) The temporary nonuse status for the particular carrier is justified; if not, GSA will instruct the agency to reinstate the carrier; or

(b) Further action toward disqualification is warranted. GSA will initiate appropriate actions in accordance with the provisions of this Subpart 101–40.4.

Subpart 101–40.49—Forms, Formats, and Agreements

29. Section 101–40.4906–1 is revised as follows:

§ 101–40.4906–1 GSA Form 420, Freight Rate and Route Request/Response.

Note.—The form illustrated in § 101–40.4906–1 is filed as part of the original document.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 5, 1979.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 79–31664 Filed 10–12–79; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing Vessels; Fee Schedule for Calendar Year 1980

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Publication of proposed amendments to foreign fishing regulations.

SUMMARY: This document sets forth proposed revisions to the fee schedule for the calendar year 1980 for fishing by foreign vessels in fisheries under the exclusive fishery management authority of the United States. This amendment also proposes that vessel fees which must be paid by the owner or operator of any foreign fishing vessel be paid when permit applications are made. In addition, a 90-day time limit for requesting poundage fee refunds is proposed. Foreign nations also would be required to submit an Effort Plan, which would estimate their projected effort in vessel days for harvesting each allocation.

DATE: Written comments may be submitted until November 16, 1979. Comments should be sent to: Mr. Denton R. Moore, Acting Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634–7432.

FOR FURTHER INFORMATION CONTACT: Mr. Denton R. Moore (see above).

SUPPLEMENTARY INFORMATION: Section 201(d) of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended, (the Act), provides that foreign fishermen may be allowed to fish for "* * * that portion of the optimum yield of a fishery which will not be harvested by vessels of the United States * * *." Section 204(b)(10) of the Act further provides that reasonable fees shall be paid by the owner or operator of any foreign fishing vessel for which a permit is issued. Fishing vessels are defined by section 3(11) of the Act to include several types of vessels in addition to those actually engaged in harvesting fish. These include any vessel "* * * aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing." Section 204(b)(10) of the Act further provides, in part: "In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement." The schedule of fees was codified as 50 CFR 611.22 on May 4, 1978 (43 FR 19232). This amendment would amend, among other things, the 1979 fee schedule which was published in the Federal Register on December 19, 1978 (43 FR 59292).

Proposed Amendments

Fee Schedule

The 1977–1979 fee schedules included fee charges for foreign fishing permits and for the poundage of each allocated species. This proposed 1980 fee schedule does not change the method for determining poundage fees although the poundage fee system is under review. Ex-vessel values on which the 1980 poundate fees are based have been updated to reflect the most current data available to NMFS. Ex-vessel values used in prior years often were derived from data which were 18 months old when those schedules became effective.

A change in the permit fee procedure is being proposed. In the past, the number of vessel applications submitted, and processed by NMFS and the Councils has been nearly double the number of permits actually paid for. This practice is wasteful of administrative costs and Council time. Consequently, under this proposal, permit applications received after January 15, 1980, would not be accepted unless accompanied by the appropriate

permit fees. Applications in the system, whether approved or not, will be cancelled on January 15, 1980, unless the appropriate permit fees have been paid. NOAA expects that this requirement of advance payment of permit fees will urge foreign nations to be more judicious in the number of permit applications submitted. Fees would be refunded only if the applications were not approved, or were withdrawn before January 15, 1980. The amount of the fees would be the same as in 1979.

Effort Plan

It is also proposed that foreign nations submit a 1980 Effort Plan for each directed fishery in which allocations are received. The purpose of the Effort Plan, which will estimate catch per vessel per day, is to give NOAA and the Regional Fishery Management Councils an estimate of the number of foreign fishing vessels that will fish at different areas and times of the year. The Effort Plans also will assist NOAA In developing options for a new fee schedule, which might be based on fishing days instead of poundage allocations. Foreign nations will not be required to adhere to their Effort Plans.

Other Proposed Changes

It is proposed to delete the table of Total Allowable Level of Foreign Fishing (TALFF's) in section 611.20(c), and all references to it. This change is proposed because subsequent changes in TALFF's throughout the year invalidate the initial TALFF table. The frequency of the reserve releases and other operating shifts resulting in reallocations is almost a continuous process in some fisheries. Consequently, any published Table is obsolete almost as soon as it appears. Information on current TALFF's may be obtained from the appropriate NMFS Regional Director, or from the Chief, Permits and Regulations Division, NMFS.

It is proposed to amend 50 CFR Part 611 to honor requests for poundage fee refunds for fisheries which have been completed in each calendar year only for 90 days after the end of the calendar year in which the fishery was completed.

Note.—The implementation of these amendments by the Assistant Administrator for Fisheries does not constitute a major Federal action significantly affecting the quality of the human environment. The Assistant Administrator has determined that this action does not require the preparation of a regulatory analysis, nor does it meet the criteria of significance, under E.O. 12044.

Authority.—16 U.S.C. 1801 *et seq.*

Signed at Washington, D.C., this 11th day of October 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

It is proposed to amend 50 CFR 611 in the following manner;

§ 611.20 [Amended]

1. Delete subsection 611.20(c) and Table 1.

§ 611.21 [Amended]

2. Amend 611.21 by renumbering it as paragraph (a) and adding the following paragraph (b).

"(a) * * *

(b) *Effort Plan.* (1) After the Secretary of State notifies each foreign nation of its allocation or reallocation of target species; each such nation shall prepare and submit an Effort Plan to the Assistant Administrator for Fisheries, NOAA, Washington, D.C. 20235. *Provided,* however, that no Effort Plan need be prepared or submitted in those cases when the allocation or reallocation is less than 100 m.t. Such plans may be submitted as soon as possible after the commencement of fishing if adequate time to prepare the plan does not exist between the allocations or reallocations and the start of fishing. Effort plans must be submitted before 30 days after a corresponding allocation or reallocation however. The Effort Plan should define, for each vessel class, the range of vessel sizes, gear types, and catch rate per day fishing, and should specify the following information:

i. The number of vessels in each vessel class expected to be used in each directed fishery.

ii. The approximate time schedule for each fishery, including the number of fishing days and days on ground required to harvest the allocation or reallocation, based on catch rates in the U.S. fishery conservation zone to date.

iii. Factors which may cause a deviation from this plan.

(2) Nations will not be required to submit revised plans if, during actual fishing, it is necessary to deviate from the plan other than as the result of reallocations."

3. Amend 50 CFR 611.22 by deleting subsection (a)(1) and inserting the following:

§ 611.22 [Amended]

(a) * * *

(1) *Permit fees.* (i) The owner or operator of each foreign vessel applying for a permit under section 611.3 is required to pay a permit fee. Each vessel permit application submitted to the Department of State pursuant to section 611.3 shall be accompanied by the appropriate permit fee amount as specified in Table I of this section, unless otherwise provided in paragraph (1)(ii) of this section. In the case of vessels described in more than one category, the highest applicable fee will be charged. Permit fees will be refunded if the application is not approved or if the application is withdrawn prior to approval and permit issuance. On a case-by-case basis, the Assistant Administrator for Fisheries may allow the substitution of like vessels when the original vessel has become disabled or otherwise cannot participate in the fishery.

Table I

Vessel activity	Permit fee
Catching (activities described in § 611.2(r) (1) or (2)) with an applicable national allocation (per gross registered ton)	$1.00
Catching (activities described in § 611.2(r) (1) or (2)) without an applicable national allocation, i.e., a nonretention fishery (per vessel)	200.00
Processing (activities described in § 611.2(r)(3)(i) (per gross registered ton) (up to $2,500)	.50
Other support (activities described in § 611.2(r)(3) (ii) or (iii) (per vessel)	200.00

(ii) A nation may submit applications before January 15, 1980, without paying permit fees at the time of application. Permit fees must be paid on January 15, 1980, for all applications on file on that date. In addition, if a nation wishes to have a permit issued prior to January 15, 1980, the permit fee must be paid before issuance. For applications submitted on or after January 15, 1980, permit fees must be paid at the time of application.

§ 611.22 [Amended]

4. Amend section 611.22 (a)(2) by deleting the words "where U.S. landing data are available in 1977,", and substituting the word "for" therefor.

5. Amend section 611.22(a)(3)(iii) by inserting after the word "application" the words "received by NMFS Washington, D.C. office not more than 90 days after the end of the calendar year".

6. Amend section 611.22 by striking paragraph (b) and substituting the following:

(a) * * *

(b) The following exvessel prices to be used for computing fees are based on U.S. commercial landings prices for the most recent available representative period, as noted:

Average Exvessel Values Per Metric Ton

[Values in dollars]

Species	Proposed 1980 values
Atlantic:	
Butterfish	[1] $927
Hake, red	[1] 315
Hake, silver	[1] 369
Herring, river	[1] 113
Mackerel, Atlantic	[1] 580
Other finfish	[1] 930
Sharks (except dogish)	[1] 1,091
Squid—*Illex*	[2] 176
Squid—*Loligo*	[2] 993
Pacific and North Pacific:	
Atka mackerel	[3] 394
Cod, Pacific	[4] 419
Crabs, Snow (tanner) *Opilio*	[4] 882
Flounders	[4] 397
Hake (Pacific whiting)	[5] 176
Herring, Sea-roeless	[4] 165
Herring, sea-w/roe	[4] 1,750
Jack mackerel	[5] 154
Ocean perch	[4] 397
Other groundfish	[6] 56
Pollock	[4] 176
Rockfishes	[4] 397
Sablefish-longline	[4] 1,543
Sablefish-trawl	[4] 576
Snails (meats)	[3] 1,657
Squid	[7] 1,814
Western Pacific:	
Dolphin	[7] 4,354
Other billfish	[7] 1,111
Seamount groundfish	[3] 397
Sharks (except dogfish)	[3] 825
Striped marlin	[7] 2,816
Swordfish	[7] 3,036
Wahoo	[7] 2968

[1] Maine, Massachusetts, Rhode Island, New York, New Jersey, and Virginia, U.S. landings—January–June 1979.
[2] U.S. landings, New York, January–June 1979.
[3] Prices in Japan, 1978.
[4] U.S. landings, Alaska, September 1979.
[5] U.S. landings, Washington, Oregon and California—September 1979.
[6] Based on price for U.S. landings of northern anchovy—September 12979.
[7] Hawaii landings, 1978.

Note.— No fees will be charged for rattails (grenadiers). This species is taken incidentally in the sablefish fishery. The species is of no commercial value, and is routinely discarded by U.S. and foreign fishermen.

§§ 611.22, 611.50, 611.60, 611.70, 611.80, 611,91, 611.92, 611.93, 611.94 [Amended]

It is proposed to amend section 611.22(d), 611.50(b)(3), 611.60(b)(2), 611.70(b)(1), 611.80(b)(2), 611.91(b)(2), 611.92(b)(1), 611.93(b)(2), and 611.94(b)(2) by deleting and reserving them.

[FR Doc. 79-31926 Filed 10-12-79; 8:45 am]
BILLING CODE 3510-22-M

Federal Register
Vol. 44, No. 200
Monday, October 15, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Agency Organization and Personnel; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Agency Organization and Personnel of the Administrative Conference of the United States, to be held at 10:00 a.m., Friday, November 2, 1979, in the library of the Administrative Conference, Suite 500, 2120 L Street, N.W., Washington, D.C.

The Committee will meet for further consideration of proposed recommendations from Professor Thomas Morgan on post-employment restrictions on former Federal employees and of Professor Michael Cardozo's report and proposed recommendations on experience under the Federal Advisory Committee Act.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of the meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information, contact Richard K. Berg (202–254–7020). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Secretary.
October 9, 1979.

[FR Doc. 79-31724 Filed 10-12-79; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of Transportation

Rural Transportation Advisory Task Force; Meeting

AGENCY: Office of Transportation, U.S. Department of Agriculture.

ACTION: Notice of Public Meeting of the Rural Transportation Advisory Task Force.

DATES: October 15, 1979, 1:30 p.m.; October 16, 1979, 9:00 a.m.; October 17, 1979, 9:00 a.m.

ADDRESS: October 15–17, 1979, O'Hare Airport Hilton, Chicago, Illinois.

SUMMARY: At the completion of its work on January 1, 1980, the Task Force will report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs and recommend approaches for establishing a national agricultural transportation policy and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. The Task Force formed three subcommittees on policy and essential transportation needs of agriculture; railroad problems of agriculture; and highway, waterway; and air transportation problems of agriculture. The Task Force has published its interim report including the identification of critical agricultural transportation issues. The Task Force has also held 12 regional public hearings. The Task Force has reviewed public comment received during regional hearings.

The purpose of this meeting is to continue discussion on final recommendations.

The public is invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Tosterud, Office of Transportation, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: (202) 447–7690.

Dated: September 28, 1979.
Ron Schrader,
Director, Office of Transportation.

[FR Doc. 79-31760 Filed 10-12-79; 8:45 am]
BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

[Docket No. 36767]

Miami/New Orleans-San Jose, C.R. Case; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., October 9, 1979.
Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 79-31761 Filed 10-12-79; 8:45 am]
BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 5, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Dated filed	Docket No.	Description
Oct. 5, 1979	36805	Texas International Airlines, Inc., P.O. Box 12788, Houston, Texas 77017. Application of Texas International Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act and Rule 1701(b) of Subpart Q of the Board's Rules of Practice for amendment of its Certificate of Public Convenience and Necessity for Route 82 to remove its one-stop restriction in the Houston-Tulsa market. Answers are due October 19, 1979.
See 44 FR 55618, September 27, 1979. Application should read:		
Sept. 18, 1979	36620	National Airlines, Inc. P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. pursuant to Section 401 of the Act requesting a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Denver, Co., and the terminal point Sacramento, Ca. "Between the terminal point Denver, Co., and the terminal point Fresno, Ca. "Between the terminal point Sacramento, Ca., and the terminal point Fresno, Ca." Conforming applications and answers due October 15, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-31782 Filed 10-12-79; 8:45 am]
BILLING CODE 6320-01-M

[Docket Nos. 32398 and 32682]

Supplemental Carrier Fill-Up Case; Application of American Airlines, Inc. for Certificate of Public Convenience and Necessity; Order Terminating Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of October, 1979.

By Order 78-4-50, dated April 11, 1978, the Board began an investigation to examine whether supplemental (now charter) air carriers should be given partial scheduled carrier authority to fill up empty seats on charter flights by selling "individually ticketed" seats to the public. The Board, by this investigation, was considering removing the regulatory restraints on charter carriers to allow them a better opportunity to compete with carriers that offer tours on their scheduled service.

On August 23, 1979, the Board adopted SPR-166 (44 FR 50824, August 30, 1979), permitting airlines to sell charter seats directly to the public. Prior to passage of the Airline Deregulation Act (P.L. 95-504) in 1978, direct air carriers, including charter carriers, were not allowed to make direct sales of charter seats. Charters had to be sold by tour operators, indirect air carriers unconnected with the direct air carrier.

Under the new direct sales regulations (14 CFR §§ 207.71, 208.501, 212.71, 214.61) a minimum contract size for the charter group is not required, but the charter participant contract must be signed by the charter passenger not later than 7 days before departure of the outbound flight. All of the charter consumer protection rules do apply to such charter sales (14 CFR Part 380). These are the only restrictions, however, on sales of charter seats directly by the airlines, including charter carriers.

Although SPR-166 does not literally give charter carriers authority to sell "individually ticketed" seats on charter flights, it does give them in effect the same ability to fill empty seats as was being examined in the Supplemental Fill-Up Case, since there is no minimum contract size for direct sales charters. The direct sales rules thus give all carriers the ability and flexibility to compete equally for charter business, and will further stimulate air transportation as a whole. The increased load factors available by use of direct sales should also exert some downward pressure on charter prices.

Since these results are the same as those considered in the Supplemental Fill-Up Case, we are terminating that proceeding.

In Docket 32682, American Airlines filed an application to carry fill-up individually ticketed traffic on its charter flights. On May 16, 1978, American filed a motion to consolidate its application with the Supplemental Fill-Up Case. The motion is granted. Docket 32682 is consolidated with Docket 32398 and included in its termination.

Accordingly, it is ordered that:

1. American's motion to consolidate its application in Docket 32682 with Docket 32398 is granted;

2. The investigation began by Order 78-4-50 in Docket 32398 is terminated.

The order shall be published in the Federal Register.

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-31783 Filed 10-12-79; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to review status reports on development of fishery management plans; consider foreign fishing applications, if any; and conduct other fishery management business.

DATES: The meeting will convene on Wednesday, November 7, 1979, at 1:30 p.m.; reconvene on Thursday and Friday, November 8 & 9, 1979, at 8:30 a.m.; adjourning at 5 p.m. on all three days. The meeting is open to the public.

ADDRESSES: The meeting will take place in the Shag Daye Room of the Miami Springs Villas and King Inn Hotel, 500 Deer Run, Miami Springs, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: October 10, 1979.
Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-31719 Filed 10-12-79; 8:45 am]
BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council's; Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee (SSC) which will meet to review a draft Fishery Management Plan (FMP) on Reef Fish.

DATES: The meeting will convene Thursday, November 1, 1979, at 10 a.m.; reconvene on Friday, November 2, 1979, at 8 a.m.; adjourning at 5 p.m. on both days. The meeting is open to the public.

ADDRESS: The meeting will take place in the Rex Room of the Quality Inn, 2610 Williams Boulevard, Kenner, Louisiana.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: October 10, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-31718 Filed 10-12-79; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit

Notice is hereby give that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Dr. Howard Winn (P12D)

b. Address: Graduate School of Oceanography, University of Rhode Island, Kingston, Rhode Island 02881

2. Type of Permit: Scientific Research and Scientific Purposes

3. Name and Number of Animals:

humpback whales *(Megaptera novaeangliae);* 75.

bowhead whale *(Balaena mysticetus);* blue whale *(Balaenoptera musculus);* gray whale *(Eschrichtius robustus);* humpback whale *(Megaptera novaeangliae);* right whale *(Balaena glacialis);* southern right whale *(Balaena australis);* sei whale *(Balaenoptera borealis);* sperm whale *(Physeter catodon);* fin whale *(Balaenoptera physalus);* a total of 60.

4. Type of Take: 50 humpback whales may be subject to biopsy dart sampling. Specimen materials may be imported from 25 humpback whales found dead or taken in the aboriginal hunt in Bequia, British West Indies. 60 marine mammals including some endangered cetaceans may be potentially harassed during acoustical and underwater observations.

5. Location of Activity: Atlantic and Pacific Oceans, primarily in the West Indies.

6. Period of Activity: years.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or request for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before November 14, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33720;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 01930; and

Regional Director, National Marine Fisheries Service, Alaska Region, Post Office Box 1668, Juneau, Alaska 99802.

Dated: October 10, 1979.

Richard B. Roe,

Deputy Director, National Marine Fisheries Service.

[FR Doc. 79-31766 Filed 10-12-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Level for Certain Man-Made Fiber Headwear From Taiwan

October 10, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Including man-made fiber headwear, wholly or in part of braid, in T.S.U.S.A. No. 703.0500 within the existing ceiling established for man-made fiber textile products in Category 659pt., produced or manufactured in Taiwan, and increasing that ceiling to 2,725,000 pounds for the twelve-month period which began on January 1, 1979. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1979 (FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).)

SUMMARY: Under the terms of the bilateral textile agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, agreement has been reached to include certain man-made fiber headwear in T.S.U.S.A. No. 703.0500 within the existing ceiling for Category 659(pt.) and increase that ceiling to 2,725,000 pounds during the agreement year which began on January 1, 1979 and extends through December 31, 1979.

EFFECTIVE DATE: October 16, 1979.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 28, 1978, there was published in the Federal Register (43 FR 60633) a letter dated December 22, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported to the United States during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the level of restraint established for Category 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) to 2,725,000 pounds. Imports in T.S.U.S.A. number 703.0500 during the January-August 1979 period have amounted to 1,341,896 pounds and will be charged.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreement.

October 10, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 22, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specific categories, produced or manufactured in Taiwan and exported to the United States during the agreement year which began on January 1, 1978, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973 as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning textile products, produced or manufactured in Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1971, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on October 16, 1979, the level of restraint established in the directive of December 22, 1978 for Category 659pt., as follows:

Category	Adjusted 12-mo level of restraint[2]
659 (only T.S.U.S.A. Nos. 703.0500 & 703.1000.	2,725,000 pounds

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1978. Imports in T.S.U.S.A. number 703.0500 have amounted to 1,341,896 pounds during the penod January-August 1979.

The action taken with respect to Taiwan and with respect to imports of man-made fiber textile products from Taiwan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such action, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-31739 Filed 10-12-79; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, which provide, in part, that: (1) within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of Final EIS—Proposed 1979 Wholesale Rate Increase

Notice is hereby given that a Final Environmental Impact Statement, DOE/EIS-0031-F, Bonneville Power Administration (BPA), Proposed 1979 Wholesale Rate Increase has been issued pursuant to the Department of Energy's (DOE) implementation of the National Environmental Policy Act of 1979. The statement was prepared to assess the anticipated environmental impacts that may be associated with the adoption of BPA's proposed wholesale power rate increase on December 20, 1979. The draft of this statement was issued in August 1978.

Copies of the final Environmental Impact Statement are available for public inspection at designated Federal depositories (for locations, contact the Environmental Manager, BPA, P.O. Box 3621, Portland, Oregon 97208) and at DOE public document rooms located at:

Library, FOI—Public Reading Room GA152, Forrestal Building, 1000 Independence Ave. SW., Washington, D.C.
BPA, Washington, D.C. Office, Federal Building, Room 3352, 12th & Pennsylvania Ave. NW., Washington, D.C.
Library, BPA Headquarters, 1002 NE. Holladay Street, Portland, Oregon

And in the following BPA Area and District Offices:

Eugene District Office, U.S. Federal Building, 211 East 7th St., Room 206, Eugene, Oregon
Idaho Falls District Office, 531 Lomax Street, Idaho Falls, Idaho
Kalispell District Office, Highway 2 (East of Kalispell), Kalispell, Mont.
Portland Area Office, 919 NE. 19th Avenue, Room 210, Portland, Oregon
Seattle Area Office, 415 First Avenue North, Room 250, Seattle, Wash.
Spokane Area Office, U.S. Court House, Room 561, W. 920 Riverside Avenue, Spokane, Wash.
Walla Walla Area Office, West 101 Poplar, Walla Walla, Wash.
Wenatchee District Office, U.S. Federal Building, Room 314, 301 Yakima Street, Wenatchee, Wash.

Copies of this document have also been furnished to those who commented on the draft statement.

Single copies are available for distribution by contacting the Environmental Manager, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, or one of the BPA Area or District Offices mentioned above.

Dated at Portland, Oregon, this 24th day of September 1979.

Ray Foleen,

Acting Administrator.

[FR Doc. 79-31751 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Case Nos. 50154-6010-01-77 and 50154-6010-02-77]

Brandon Shores Units 1 and 2 Baltimore Gas & Electric Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Baltimore Gas and Electric Company Brandon Shores Units 1 and 2 as Existing Facilities.

SUMMARY: On June 15, 1979, Baltimore Gas and Electric Company (BG&E) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Brandon Shores Units 1 and 2 as existing facilities pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA). ERA has completed its analysis of BG&E's request and has determined that BG&E has satisfactorily demonstrated that it would suffer a substantial financial penalty in excess of 25 percent of the total projected project cost as of Novermber 9, 1978, for each of the Brandon Shores units within the meaning of Section 515.6 of the Revised Interim Rule.

ERA has determined that BG&E's Brandon Shores Units 1 and 2 are "existing" facilities and are now subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, S.W., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

James W. Workman, Acting Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, S.W., Room 3128, Washington, D.C. 20461, Phone: (202) 254-7442.

G. Randolph Comstock, Deputy Assistant General Counsel for Coal Regulations, Office of the General Counsel, Department of Energy, 1000 Independence Ave., S.W Rm. 6G-067, Washington, D.C. 20461, Phone: (202) 252-2967.

Robert L. Davies, Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, N.W., Room 3128L, Washington, D.C. 20461, Phone: (202) 254-7442.

SUMMARY INFORMATION: (1) On June 15, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, BG&E requested that ERA classify BG&E's Brandon Shores Units 1 and 2 as "existing" facilities. On July 19, 1979, ERA published a summary of BG&E's request for classification in the Federal Register and requested comments by interested persons on or before August 9, 1979. ERA has not received any comments in response to the notice published by ERA in the Federal Register on July 19, 1979.

(2) ERA has analyzed the material submitted by BG&E applicable to the Brandon Shores Units 1 and 2 and on the basis of such analysis has determined that BG&E has satisfactorily demonstrated that it would suffer a substantial financial penalty in excess of 25% of the total projected project cost as of November 9, 1978, for each of the Brandon Shores Units within the meaning in Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated September 17, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., October 9, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion Economic Regulatory Administration.

[FR Doc. 79-31742 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case Nos. 50154-6010-01-82 and 50154-6010-02-82]

Baltimore Gas & Electric Co. Proceeding; Reduction of Public Comment Period No's. 50154-6010-01-82 and 50154-6010-02-82

Pursuant to Section 501.51(b)(8) of the regulations (10 CFR Part 501) promulgated under the Powerplant and Industrial Fuel Use Act of 1978, Baltimore Gas and Electric Company has requested that the initial three-month public comment period, provided for under Comment and Public Hearing Procedures in the notice and issuance of proposed prohibition order pursuant to sections 301 and 701 of the powerplant and industrial fuel use act of 1978 (Proposed Order) issued by the Economic Regulatory Administration of the Department of Energy on October 9, 1979, be reduced to a period of 45 days. The Economic Regulatory Administration hereby grants the request of Baltimore Gas and Electric Company. As a result, the initial three-month public comment period is reduced to a period of 45 days after publication of this Notice of Amendment to the Proposed Order in the Federal Register.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-31748 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 50154-6010-01-82 and 50154-6010-02-82]

Baltimore Gas & Electric Co.; Notice and Issuance of Proposed Prohibition Order Pursuant to Sections 301 and 701 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice pursuant to Section 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, of the issuance of the following proposed prohibition order which would prohibit the powerplants named below from burning natural gas or petroleum as their primary energy source.

Proposed Prohibition Order

Pursuant to the authorities granted it by Section 301(b) of FUA, ERA issues this proposed prohibition order to the following powerplants owned by the Baltimore Gas and Electric Company (BG&E).

ERA No.	Generating station	Powerplant No.	MW	Location
50154-6010-01-82	Brandon Shores	1	610	Anne Arundel County, Md.
50154-6010-02-82	Brandon Shores	2	610	Anne Arundel County, Md.

Statement of Basis and Rationale for Proposed Prohibition Order

ERA has issued regulations applicable to existing facilities 10 CFR Part 504 (Regulations), to implement the prohibitions contained in Section 301(b) of Title III of FUA. Section 504.5 of the Regulations sets forth the basis upon which ERA will propose to prohibit by order the use of natural gas or petroleum as a primary energy source by a powerplant where ERA finds that the powerplant has or previously had the technical capability to use an alternate fuel as a primary energy source.

BG&E has reported to ERA that the potential oil displacement in converting the Brandon Shores Units to an alternate fuel (coal) is approximately 25,000 barrels of oil per day or 9 million barrels annually. By unit, the potential oil savings are approximately 11,000 and 14,000 barrels of oil per day or 4 million and 5 million barrels annually for Units 1 and 2, respectively.

Finding of Technical Capability

In accordance with Section 301(b) of Title III of FUA, this proposed order is based on a finding by ERA that BG&E's Brandon Shores powerplant Units 1 and 2 have or previously had the technical capability to use an alternate fuel (coal) as a primary energy source. This finding is based upon information requested by ERA of BG&E pursuant to a letter of BG&E's dated September 17, 1979. In its submission to ERA, BG&E stated the following:

Units 1 and 2 of the Brandon Shores Powerplant will have, as of the date when each commences commercial operation, the technical capability to burn coal as their primary energy source, notwithstanding the fact that, in the case of Unit 1, which will commence commercial operation as an oil-fired unit in mid-1981, minor adjustments must be made before coal may be burned as that Unit's primary energy source. Accordingly, the finding of technical capability to use coal as a primary energy source in both Units may be made by ERA pursuant to 10 CFR Section 504.5(a)(1).

The technical capability finding is made in accordance with the requirements of Section 504.5(d) of the Regulations, taking into consideration the ability of the units, from the point of fuel intake, to physically sustain combustion of coal and maintain heat transfer as evidenced by the statement submitted by BG&E to ERA, in which BG&E stated that:

Units 1 and 2 of the Brandon Shores Powerplant will have the ability, at the point of fuel intake, to physically sustain

the combustion of coal and to maintain heat transfer without substantial physical modification to either unit as contemplated by 10 CFR Sections 504.5(a)(2)(i), 504.5 (d)(1) and (d)(3). With respect to Unit 1, while its initial commercial operation will be as an oil-fired unit, no substantial reduction in the rated capacity of the unit would occur upon its subsequent conversion to burn coal as its primary energy source (10 CFR Sections 504.5 (a)(2)(ii) and (f)(1)).

This finding also recognizes, in accordance with Section 504.5(d), that the Brandon Shores Units are capable of burning coal, notwithstanding any required refurbishment of plant equipment in order to burn coal as a primary energy source in the units, or any required installation of air pollution control equipment to meet air quality standards.

Other Required Findings

Section 301(b) of FUA states that prior to the issuance of a final prohibition order ERA must also find that (1) the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) it is financially feasible for the powerplant to use coal or another alternate fuel as its primary energy source in such powerplant.

Proposed Prohibition Under Title III of FUA

Subject to the other required findings that ERA must make, ERA hereby proposes to prohibit BG&E's Brandon Shores Units 1 and 2 from burning petroleum or natural gas as their primary energy source.

Description of Prohibition Order Proceedings

Pursuant to Section 301 of FUA, ERA has promulgated Regulations applicable to the issuance of prohibition orders to existing facilities, a summary of which follows:

(1) ERA has performed its initial information gathering with respect to the question of technical capability to burn alternate fuels (coal) and has informed BG&E that it is considering issuance of a proposed prohibition order. ERA has also had informal discussions with BG&E concerning the issuance of a proposed prohibition order.

(2) ERA has made a finding that the Brandon Shores Units have or previously had the technical capability of using coal as their primary energy source. ERA is publishing this finding and proposed prohibition order in the Federal Register as required by Section 701(b) of FUA. In accordance with Section 301(b) of FUA, the proposed prohibition order is not required to contain, at this point in the proceeding, the other pertinent findings that ERA must make before a final prohibition order can be issued. These are (1) that the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial physical modification of the powerplant, or (B) substantial reduction in the rated capacity of the powerplant; and (2) that it is financially feasible for BG&E to use coal or another alternate fuel as a primary energy source in such powerplant.

(3) In accordance with Section 501.51(b)(3) of the Regulations, a three-month public comment period is to commence, during which period BG&E will be given an opportunity to challenge ERA's initial finding of technical capability contained in this proposed prohibition order.

During this 90 day comment period, under Section 501.51(b)(3) of the Regulations, BG&E is required to furnish ERA with such additional evidence as is necessary to enable ERA to make the other statutory findings set forth above, which are required to be made by ERA prior to issuance of a final prohibition order. BG&E will also be required, during this period, to identify, but not to demonstrate its entitlement to, any exemptions for which either of the Brandon Shores Units may qualify.

(4) Subsequent to the end of the 90 day comment period, ERA will issue a notice of whether ERA intends to proceed with the prohibition order proceeding. Within three months of the issuance of the notice of intention to proceed with the prohibition order, an owner or operator of a powerplant that may be subject to an order may demonstrate prior to issuance of a final prohibition order that the powerplant would qualify for an exemption if the prohibition had been established by rule.

(5) Subsequent to the end of the second comment period, ERA will, if it intends to issue a final prohibition order, prepare and publish notice of availability of a tentative staff decision.

(6) Under the provisions of Section 701(d) of FUA, any interested person may request a public hearing on the proposed prohibition order and tentative staff decision. Interested persons wishing a hearing must request a hearing within 45 days after publication of the notice of availability of the tentative staff decision. If a hearing has been requested, ERA shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with Subpart C of 10 CFR Part 501.

(7) At the hearing, if any, interested persons will have the opportunity to question the parties about ERA's proposed order and tentative staff decision, BG&E's showing on exemptions and rebuttal of ERA's proposed order, and ERA's rebuttal to any showing of potential qualification for exemption.

(8) After the hearing, if any, and second comment period, ERA shall determine whether a final prohibition order will be issued based upon a review of the entire administrative record. A final prohibition order, if issued, will be published in the Federal Register. Final orders become effective sixty days after publication.

Comment and Public Hearing ProcedureS

ERA hereby also gives notice of the opportunity to submit written comments, views, and arguments by interested persons regarding this proposed prohibition order. Comments need not be limited to ERA's technical capability finding, but may include a discussion of all three statutory findings.

The initial comment period shall remain open for a period of 90 days after publication of this proposed order in the Federal Register, unless reduced at the request of the recipient of the proposed prohibition order pursuant to Section 501.51(b)(8). Notice of any such change during the time for public comment will be published in the Federal Register.[1] Comments should make reference to the docket numbers set forth in this notice and proposed order. Comments should address the adequacy and validity of the findings and any other aspects or impacts of the proposed prohibition order believed to be relevant. Written comments on the proposed prohibition order should be directed to Public Hearing Management (Case Nos. 50154-6010-01-82 and 50154-6010-02-82), U.S. Department of Energy, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461, and should be received before 4:30 p.m. on the forty-fifth day following publication in the Federal Register of the notice of amendment to

[1] Note.—Subsequent to the date of this order, ERA has received a request from BG&E to reduce the initial comment period to 45 days. This request has been granted by ERA pursuant to an amendment to this order which is published after this order in the Federal Register. (See FR Doc. 79-31748.)

this notice and proposed prohibition order.

In accordance with 10 CFR 501.34, any interested person may request a public hearing on the proposed order. The request must include a description of the person's interest in the proposed prohibition order, an outline of the anticipated content of the presentation to be made at the public hearing, and an address and telephone where the person requesting the public hearing may be reached.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Order for the Brandon Shores Units." Fifteen copies should be submitted. All written comments, all oral presentations, and all other relevant information submitted to or available to ERA will be considered by ERA. Any information or data considered to be confidential by the person furnishing it must be so identified in writing in accordance with 10 CFR 303.9(f). ERA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

For further information contact: William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C., 20461, (202) 634-2170, —Robert L. Davies (Fuels Conversion Program Office), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128L, Washington, D.C., 20461, (202) 254-7442.

G. Randolph Comstock (Office of General Counsel), Department of Energy, 1000 Independence Avenue, N.W., Room 6G-087, Washington, D.C., 20585, (202) 252-2967.

Issued in Washington, D.C., October 9, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-31750 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Beacon Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: August 20, 1979.

COMMENTS BY: November 14, 1979.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106, (phone) 816-374-5932.

SUPPLEMENTARY INFORMATION: On August 20, 1979, the Office of Enforcement of the ERA executed a Consent Order with Beacon Oil Company of Adrian, Michigan. Under 10 CFR § 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Beacon Oil Company (Beacon), with its home office located in Adrian, Michigan, is a firm engaged in the marketing of motor gasoline and middle distillates to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Beacon, the Office of Enforcement, ERA, and Beacon Oil Company entered into a Consent Order.

The Consent Order encompasses Beacon's sale of covered products during the period November 1, 1973 through April 30, 1974.

II. Disposition of Refunded Overcharges

In this Consent Order, Beacon agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of twenty-nine thousand six hundred sixty dollar and fourteen cents ($29,660.14). Refunded overcharges will be in the form of a direct refund.

Issued in Kansas City on the 20th day of August, 1979.

WILLIAM D. MILLER,

District Manager of Enforcement.

[FR Doc. 79-31748 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order to Adolph Beren, Harry Beren and Israel Beren d.b.a. Okmar Oil Co.

Notice is hereby given that on September 28, 1979, the Proposed Remedial Order (PRO) summarized below was issued by the Central Enforcement District of the Economic Regulatory Administration (ERA) of the Department of Energy to Okmar Oil Company, P.O. Box 548, Marietta, Ohio 45750.

The PRO includes findings that Okmar, a crude oil producer, overcharged $164,736.25 in sales of crude oil during the period November 1973 through December 1975. The overcharges occurred with respect to the Huey Ranch property located in Morgan County in the State of Colorado. The reason for the overcharges was Okmar's erroneous characterization of said property as a stripper well lease, as defined at 6 CFR 150.54(s) during the period November 16, 1973, through January 14, 1974; at 10 CFR 210.32 during the period January 15, 1974 through December 31, 1975.

The Office of Enforcement of the ERA has proposed in the PRO that Okmar be required to refund the full amount of overcharges (plus interest) found with respect to the property as the Department of Energy shall direct. Refunds shall be made over a period of time which is equal to the number of months during which overcharges have been found with respect to the property.

A copy of the PRO, with any confidential information deleted, may be obtained from the ERA at the following address:

Chief, Crude Products Management Branch, Central Enforcement District, Economic Regulatory Administration, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

Any aggrieved person may, on or before October 30, 1979, file a Notice of Objection with the Office of Hearings and Appeals in accordance with 10 CFR 205.193. Pursuant to 10 CFR 205.193, a Notice of Objection must be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the PRO as a final Remedial Order, and shall state the person's intention to file a Statement of Objections pursuant to 10 CFR 205.196. No confidential information shall be included in a

Notice of Objection. A Notice of Objection must be filed at the following address:

Office of Hearings of Appeals, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461.

In addition, a copy of each filing must be submitted to the ERA Central Enforcement District Office at the address set forth herein, and to:

Assistant General Counsel for Administrative Litigation, Office of General Counsel, Department of Energy, Room 7149, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

Issued this 28th day of September, 1979, in Kansas City, Missouri.

William D. Miller,

Manager, Central Enforcement District, Economic Regulatory Administration.

[FR Doc. 79-31743 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 51892-6074-04-77]

Classification of Greenwood No. 4, Missouri Public Service Co.; Request for Comments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of request for classification.

SUMMARY: On June 5, 1979, Missouri Public Service Company (Mo Pub) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Greenwood Energy Center Unit No. 4 (Greenwood No. 4) as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA). FUA, which became effective May 8, 1979, imposes certain statutory prohibitions against the use of natural gas and petroleum by new and existing electric powerplants. ERA's decision in this matter will determine whether Greenwood No. 4 is a new or existing powerplant. The prohibitions which apply to existing powerplants are different from those which apply to new powerplants.

The purpose of this Notice is to invite interested persons to submit written comments on this matter prior to the issuance of a final decision by ERA. In accordance with § 515.26 of the Revised Interim Rule, no public hearings will be held.

DATE: Written comments are due on or before November 5, 1979.

ADDRESSES: Ten copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 634-2170.

James W. Workman, Acting Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128I, Washington, D.C. 20461, Phone (202) 254-7450.

G. Randolph Comstock, (Office of the General Counsel), Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585, Phone (202) 252-2967.

Robert L Davies, Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128I, Washington, D.C. 20461, Phone (202) 254-7442.

SUPPLEMENTARY INFORMATION: Missouri Public Service Company (Mo Pub) is a corporation organized under the laws of the State of Missouri. Mo Pub supplies electric service in portions of western Missouri.

Mo Pub stated that it executed a contract in December 1974, revised in October 1976, for the construction of a 50 MW, oil-fired combustion turbine, to be known as Greenwood Energy Center Unit No. 4 (Greenwood No. 4) in Jackson County, Missouri, and that commercial operation was scheduled for June 1979.

On June 5, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, Mo Pub requested that ERA classify Greenwood No. 4 as an "existing" facility.

In accordance with Section 515.6 of ERA's Revised Interim Rule, a powerplant will be classified as existing if the cancellation, rescheduling or modification of the construction or acquisition of apowerplant would result in a substantial financial penalty or an adverse effect on the electric system reliability. Mo Pub supported its request for classifcation by providing evidence in support of their claim that it would suffer a substantial financial penalty if Greenwood No. 4 were not permitted to proceed as an oil-burning facility. A summary of the evidence requirements and Mo Pub's response to those requirements follows:

Substantial financial penalty—Pursuant to Section 515.6(a) of the Revised Interim Rule, ERA will classify a facility as existing upon a demonstration that at least 25 percent of the total projected project cost of November 9, 1978, was expended in nonrecoverable outlays as of November 9, 1978.

In response to the evidence requirements of Section 515.6(b)(1) of the Revised Interim Rule, Mo Pub provided the following information:

—Total projected project cost as of November 9, 1978, $7,391,180.

—Total project expenditures as of November 9, 1978, $5,126,496.

—Total recoverable expenditures $2,700,000.

—Total nonrecoveable outlays including penalty charges for obligations and cancellations $4,120,088.

—Nonrecoverable outlays percent of total projected project expenditures as of November 9, 1978, 55.7%.

ERA hereby invites all interested persons to submit written comments on this matter.

The public file, containing Mo Pub's request for classification and supporting materials, is available for inspection upon request at: ERA, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C., on October 5, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-31745 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Partlow and Cochonour; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Comments by: November 14, 1979.

ADDRESS: Send to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch; 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Alan L. Wehmeyer; Chief, Crude Products Management Branch; 324 East 11th Street; Kansas City, Missouri 64106. Phone 816–374–5932.

SUPPLEMENTARY INFORMATION: On September 27, 1979, the Office of Enforcement of the ERA executed a Consent Order with Partlow and Cochonour of Casey, Illinois. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Partlow and Cochonour, with its home office located in Casey, Illinois, is a firm engaged in the production and sale of domestic crude oil, and is subject to the Mandatory Petroleum and Allocation Regulations at 10 CFR, Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Partlow and Cochonour the Office of Enforcement, ERA, and Partlow and Cochonour entered into a Consent Order, the significant terms of which are as follows:

1. This Consent Order covers the production and sales of domestic crude oil by Partlow and Cochonour during the period September 1, 1973 through May 31, 1977, from the Henderson No. 1 lease and the Shelton lease, such sales being made to Union Oil Company and Ashland Oil Company.

2. The reason for the overcharges was Partlow and Cochonour's erroneous characterization of each of said properties as a stripper well lease, as defined at 6 CFR 150.54(s) and at 10 CFR 210.32.

3. It is understood that Partlow and Cochonour does not, by entering into the Consent Order, admit that it has violated any regulations of the DOE.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Partlow and Cochonour agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $122,001.88, as specified in Paragraphs 1 and 5 of the Consent Order. The refunds shall be made in a one-time installment, with the refund completed within thirty (30) days of the effective date of the Consent Order. Such refunds will be made to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Alan L. Wehmeyer; Chief, Crude Products Program Management Branch; Central Enforcement District; 324 East 11th Street; Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling (816) 374–5932.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Partlow and Cochonour Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 14, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Dated: September 27, 1979.

William D. Miller,

Acting District Manager, Central Enforcement District, Economic Regulatory Administration.

[FR Doc. 79-31747 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Carl M. Schultz; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: (August 17, 1979). Comments by: November 14, 1979.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (phone) 816–374–5932.

SUPPLEMENTARY INFORMATION: On August 17, 1979, the Office of Enforcement of the ERA executed a Consent Order with Carl M. Schultz of Lapeer, Michigan. Under 10 CFR § 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Carl M. Schultz (Schultz), with its home office located in Lapeer, Michigan, is a firm engaged in the marketing of motor gasoline and middle distillates to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the

Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Schultz, the Office of Enforcement, ERA, and Schultz entered into a Consent Order.

The Consent Order encompases Schultz's sale of covered products during the period November 1, 1973 through April 30, 1974.

II. Disposition of Refunded Overcharges

In this Consent Order, Schultz agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of eighty four thousand nine hundred twenty seven dollars and eighteen cents ($84,927.18). Refunded overcharges will be in the form of a price reduction for each grade of gasoline and fuel oils pursuant to an agreement between DOE and Schultz dated November 30, 1976, until all overcharges plus interest have been refunded.

Issued in Kansas City on the 17th day of August, 1979.

William D. Miller,

District Manager of Enforcement.

[FR Doc. 79-31744 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Motor Gasoline Allocation; Guidelines for Allocation to Bulk Purchasers

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Issuance of Guidelines.

SUMMARY: The Office of Petroleum Operations (OPO) of the Economic Regulatory Administration of the Department of Energy has issued guidelines to OPO Regional Offices for the evaluation of applications for new bulk purchasers for assignment of base-period use and suppliers of motor gasoline. A copy of these guidelines is included as an appendix.

FOR FURTHER INFORMATION CONTACT:

Joel M. Yudson (Office of General Counsel), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6744.

Alan T. Lockard (Office of Petroleum Operations), Department of Energy, 2000 M Street NW., Washington, D.C. 20461, (202) 254-7422.

Issued in Washington, D.C., October 9, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Evaluation of Applications for New Bulk Purchasers for Assignment Pursuant to 10 CFR § 211.12(e)(3)

The gasoline shortages that have existed over the past five months and the tight supply situation which continues to exist have resulted in many areas experiencing long waiting lines at retail outlets, reduced hours of operations, minimum purchase requirements, and imposition of "odd/even" gasoline sales.

The inconvenience being experienced when purchasing motor gasoline at retail outlets has precipitated the filing of applications for assignment of base period use and supplier as a new bulk purchaser by a large number of individuals, consumer cooperative groups, firms or others who would not use the assigned fuel to serve the general public and whose historical "normal business practice" has been to purchase supplies of motor gasoline as end-users at the retail level. Applicants that are wholesale purchaser-consumers have requested the assignment of a supplier and assignment of a base-period volume pursuant to 10 CFR § 211.12(e)(3). End-users that are unable to locate a supplier have requested such assignments under 10 CFR § 211.12(f).

At present, based on prime supplier's current and projected motor gasoline supply availability, it appears that there is not sufficient motor gasoline available to allow the Economic Regulatory Administration to grant applications from all firms who are currently end-users and who desire, for reasons of convenience, to become bulk purchasers.[1] The granting of a large number of such applications would result in the reduction of the allocation fractions for ultimate suppliers, and, consequently, in reduced supplies to all of the ultimate suppliers' base-period purchasers. This situation would have the effect of frustrating or impairing the objectives, purposes and intent of the Emergency Petroleum Allocation Act (EPAA) of 1973 (Pub. L. 93-159), as amended, by further reducing available supplies of motor gasoline to all end-users who have historically purchased at the retail level and who are not desirous of, or eligible for, bulk purchaser treatment. To grant applications to all such persons seeking bulk purchaser status would specifically frustrate the objective in Section 4(b)(i) of the EPAA and 10 CFR § 205.35(b)(1)(vi) relating to the equitable distribution of refined petroleum products among all users.

The ERA recognizes, however, that first priority allocation levels, as set forth in § 211.103(b), were established to achieve the objectives of the EPAA by providing essential supplies of motor gasoline, to the maximum extent practicable, for the protection of public health, safety and welfare, and national defense, as well as maintenance of agricultural operations and certain essential public services. The ERA believes that the essential functions of these priority users, which, in many instances, have historically purchased at the retail level, may be seriously impaired as a result of the delays, early station closings, and other adverse conditions which exist for end-users purchasing at retail outlets. Therefore, to comply with the objectives of the EPAA and 10 CFR § 205.35(b)(1), the protection of these vital services should be accomplished by granting allocations to firms requesting bulk purchaser treatment who are entitled to a first priority allocation. Consequently, until further notice, allocations to bulk purchasers should be granted only to firms who are entitled to a first priority allocation level, unless compelling reasons dictate otherwise or, as set forth below, such a firm can demonstrate an historical normal business practice under which it would qualify as a bulk purchaser.

If the ERA determines that a firm is one which qualifies as first priority level, an application is to be evaluated pursuant to § 211.12(e)(3) in accordance with procedures set forth in Section 205, Subpart C.

In addition, if a firm which is an ultimate consumer, for a use in the second priority, as set forth in 10 CFR § 211.103(c), purchased or obtained motor gasoline and received delivery of that product into a storage tank substantially under the control of that firm at a fixed location, *prior to March 1, 1979*, an assignment of a base-period use may also be granted. Such treatment may also be granted to a firm which is an ultimate consumer that entered into a written contract *prior to March 1, 1979*, to purchase and/or install a storage tank for the purpose of receiving deliveries of motor gasoline. These actions, if taken prior to March 1, 1979, may be considered to be normal business practices for purposes of determining whether the firm qualifies as a bulk purchaser.

[1] Under 10 CFR § 211.103(d), end-users that are not bulk purchasers may not receive an allocation.

Any application where the ERA determines that the applicant does not qualify under the above guidelines should be dismissed in accordance with ERA's above stated policy. The dismissal order should contain a statement that DOE has determined that, in this period of tight supply, purchasers that during the base period purchased product on the retail level should not be given allocations as bulk purchasers or other preferred treatment at the expense of the general gasoline-buying public because to do so would be inconsistent with the objectives of the EPAA and 10 CFR § 205.35(b)(1)(vi).

In processing applications, you should be aware of the following:

1. Bulk purchasers are defined in § 211.102 and "means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains motor gasoline from a supplier and either: (a) receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location; (b) with respect to use in agricultural production, receives delivery into a storage tank with a capacity not less than 50 gallons substantially under the control of that firm; or (3) receives delivery of that product for use in cargo, freight and mail hauling by truck."

2. A "firm" is defined in § 211.11(b)(1) as follows:

"For purpose of defining an end-user or wholesale purchaser-consumer . . . a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls which act as ultimate consumers including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that utilize or store an allocated product."

3. First priority levels are set forth in § 211.103(a) and are defined in § 211.51.

[FR Doc. 79-31685 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79-473]

Alabama-Tennessee Natural Gas Co.; Application

October 5, 1979.

Take notice that on September 5, 1979, Alabama-Tennessee Natural Gas Company (Applicant), P.O. Box 918, Florence, Alabama 35630, filed in Docket No. CP79-473 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 10.7 miles of 12¾ inch O.D. pipeline necessary to render additional gas service to existing customers and initial gas service to a new customer, North Mississippi Natural Gas Corporation (North Mississippi), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that it is presently constructing pipeline and other facilities in southern Mississippi pursuant to authorization granted by the Commission in Docket No. CP78-352. It is stated that such facilities are designed to enable Applicant to purchase and make available to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for transportation to Applicant's existing pipeline system, approximately 20,000 Mcf per day of supplemental gas. Applicant states that it has an agreement with Tennessee for the transportation of up to 25,000 Mcf per day of such gas and has agreed with Tennessee to supersede its existing general service contract for a maximum of 129,144 Mcf per day with a contract demand agreement for 129,144 Mcf per day upon the commencement of delivery of such supplemental gas.

Applicant seeks authorization to construct and operate pipe line transmission facilities designed to provide an additional 18,300 Mcf of daily system delivery capacity. It is stated that the proposed facilities would increase Applicant's overall system daily delivery capability from 129,145 Mcf to 147,445 Mcf. It is indicated that the facilities that Applicant seeks authorization to construct and operate in this application consist of 10.7 miles of 12¾ inch O.D. pipeline extending from its Barton Purchase Station adjacent to Tennessee's Delta-Portland line to Applicant's Tuscumbia-Russellville valve and tap in Colbert County, Alabama, and metering facilities to serve North Mississippi Natural Gas Corporation (North Mississippi). Applicant states that a concurrent application for a certificate of public convenience and necessity is being filed by North Mississippi with the Mississippi Public Service Commission for authorization to distribute the gas proposed herein to be sold to North Mississippi to serve the Town of Burnsville, Mississippi, and environs and for sale to a new plant being built by Kimberly-Clark Corporation.

Applicant estimates the cost of the proposed facilities to be $1,750,000, which Applicant proposes to finance from cash on hand or to be obtained from liquidation of temporary cash investments.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31686 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-32]

Algonquin Gas Transmission Co.; Application for Adjustment

October 9, 1979.

Take notice that on September 28, 1979, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed in Docket No. SA79-32 an application for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) wherein Algonquin seeks exemption from the tariff filing requirements of § 281.204 of the

Commission's Regulations under the NGPA, all as more fully set forth in the application for adjustment.

Section 281.204 of the Commission's Regulations requires the filing of tariff sheet regarding curtailment plans, the filing of indices of entitlements regarding high-priority and essential agricultural users, the attribution of natural gas, and the establishment of a Data Verification Committee.

Algonquin requests that, pursuant to Section 1.41 of the Rules, an adjustment be granted with the effect of waiving the further compliance with the Rules promulgated by Order No. 29, as amended, pending commission action on the proposed Stipulation and Agreement discussed below. To that end, Algonquin moves for interim relief pursuant to Section 1.41(m) of the Rules. Moreover, Algonquin requests that the adjustment be made expressly applicable for an indefinite term, consistent with the provisions of said Stipulation and Agreement, in the event that the Commission approves such proposed Stipulation and Agreement.

Algonquin and its customers allege that their prospect for future gas supplies is excellent and that they have agreed to a Stipulation and Agreement, concurrently filed with the Commission, which proposes to delete the current termination date of November 30, 1979, for its temporary tariff provisions. Said deletion would permit its temporary tariff provisions to remain in effect for the indefinite future. It is further stated that such relief is necessary to encourage the settlement of the issues surrounding the protection of high priority uses and essential agricultural uses.

The proposed Stipulation and Agreement is said to permit re-examination of possible changes in situation, in compliance with Order No. 29.

Any person desiring to participate in this adjustment proceeding shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41). All petitions to intervene must be filed on or before October 30, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31682 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC79-147]

Algonquin Gas Transmission Co.; Filing of Proposed Stipulation and Agreement

October 9, 1979

Take notice that on September 28, 1979, Algonquin Gas Transmission Company (Algonquin) filed in Docket No. TC79-147 a proposed Stipulation and Agreement, which was concurrent to the filing of an application pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 and Section 1.41 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 1.41), requesting a waiver of strict compliance with Order No. 29 and its requirements to the extent necessary to effect the instant proposed settlement.

The Regulations promulgated in Order No. 29 require the filing of revised tariff sheets and a new index of entitlements providing protection for high-priority and essential agricultural users. The proposed Stipulation and Agreement contains the assertion that protection of high-priority and essential agricultural uses can be assured under Algonquin's current gas supply conditions by continuation of existing curtailment procedures as reflected in Section 14.7(b) of the General Terms and Conditions of Algonquin's tariff beyond October 31, 1979. Under the proposed Stipulation and Agreement, Algonquin would not be required to file the draft tariff sheets and index of entitlements contemplated by Order No. 29, and would be permitted to remove the time limitation currently incorporated in Section 14.7(b) of its General Terms and Conditions.

The proposed Stipulation and Agreement further provides that in the event that the projections of its gas supply should change materially in the future,or if any other significant fact should change or arise warranting a reexamination of Algonquin's problem of meeting the longer-term requirements of Order No. 29, then Algonquin shall be obligated to communicate such information to its customers promptly and to convene a conference or adopt other mutually satisfactory procedures looking toward resolving such problem in light of then-current information.

Algonquin further asserts that, given the existing prospects for improved gas supplies for perhaps several years in the future, any further procedures or studies at this time, including those contemplated by Order No. 29, or any further tariff changes at this time would probably be out of date and, thus, largely useless at such time as the curtailment picture worsens.

Any person desiring to participate in this adjustment proceeding shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene on protest in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41). All petitions to intervene must be filed on or before October 30, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31683 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-474]

Arkansas Louisiana Gas Co.; Application

October 5, 1979.

Take notice that on September 5, 1979, Arkansas Louisiana Gas Company (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP79-474 an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for a twelve-month period commencing December 22, 1979, and the operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction, acquisition, relocation, operation, and abandonment of facilities which would not result in changing Applicant's system saleable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment under § 157.7(g) would not exceed $3,000,000 and no single project would exceed $1,000,000. Applicant states that since the amount of the single project is in excess of the amount as set forth in subparagraph (1)(ii) of § 157.7(b) of the Commission's Regulations, it requests a waiver of the provisions of such subparagraph. Increased installation and equipment expenses are cited as the need for waiver. Applicant states that these costs would be financed from funds on hand and from short-term bank loans utilized in the

normal operation of the Applicant's total business.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31687 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-475]

Arkansas Louisiana Gas Co.; Application

October 5, 1979.

Take notice that on September 5, 1979, Arkansas Louisiana Gas Company (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP79-475 and application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder [18 CFR 157.7(b)] for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing January 1, 1980, and operation of facilities to enable it to take into its certificated main pipeline system natural gas which would be purchased or received from producers or other similar sellers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $12,000,000 and that no single offshore project would exceed a cost of $2,500,000. Applicant states that the cost of any single onshore project would not exceed $2,000,000. Since this amount is in excess of the amount as set forth in subparagraph (1)(ii) of Section 157.7(b) of the Commission's Regulations, Applicant requests a waiver of the provisions of such subparagraphs. Applicant states that inflation and general cost increases relating to installation of gathering lines justify the excess in the single onshore cost limitation. Applicant also states that these costs would be made from cash on hand and from short-term bank loans and other borrowings utilized in the normal operation of the Company's total business.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31688 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-59]

Colorado Interstate Gas Co.; Informal Settlement Conference

October 5, 1979.

Take notice that on Friday, October 19, 1979, at 10:00 A.M. an informal conference of all interested persons will be held to resolve remaining issues in this proceeding. The conference will be held in a room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits the issues in this proceedings and to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31689 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-496]

Columbia Gas Transmission Corp.; Application

October 5, 1979.

Take notice that on September 21, 1979, Columbia Gas Transmission Corporation (Applicant), 1700

MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP79-496 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Washington Gas Light Company (Washington), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport natural gas for Washington's account from Transcontinental Gas Pipe Line Corporation's (Transco) existing point of delivery to Applicant at Spring Vale near Dranesville, Virginia, to a point of redelivery to Washington near Rockville, Maryland. It is indicated that the quantity to be transported by Applicant would consist of gas which Washington is presently entitled to purchase from Transco at a point near Herndon, Virginia, and which Washington would arrange to have delivered at Spring Vale for its account. Applicant states that the maximum volumes to be transported would not exceed 40,000 dekatherms equivalent of gas per day; however, all transportation by Applicant would be on a best efforts basis.

Applicant states that it presently sells and delivers gas to Washington for use by Washington in its metropolitan distribution system at two major points, one of which is near Dranesville, Virginia, and the other is near Rockville, Maryland. Applicant also states that the gas delivered to Washington by Applicant and Transco has been at essentially the same heating value, but that with the introduction of high-Btu revaporized liquefied natural gas (LNG) into Applicant's pipeline system in Loudoun County, Virginia, a heating value imbalance has resulted on Washington's distribution system.

It is stated that Applicant has changed its operations whereby the gas purchased by it from Transco at Spring Vale can be transported to Rockville for mixing with the gas sold by Applicant to Washington at that point in order to alleviate this thermal imbalance problem. This mixing has the effect of reducing the heat content of the gas delivered at Rockville, thus counteracting the heating value imbalance on Washington's system, it is asserted.

To assist Washington further, Applicant would accept from Transco at Spring Vale, for Washington's account, a portion of Washington's gas entitlement from Transco and to transport that gas to Rockville, Maryland, for redelivery to Washington. Applicant states that the maximum quantity that it can receive from Transco at the Spring Vale delivery point is approximately 40,000 dekatherms equivalent of gas per day, which capacity can vary depending upon the pressures that exist in the lines of Applicant and Transco from day to day. It is stated that Applicant's purchases from Transco would be the first gas through the meter at Spring Vale, and any receipts of gas from Transco for Washington's account would be on a best efforts basis.

Applicant indicates that Transco is currently authorized to sell up to 55,000 dekatherms equivalent of gas per day to Washington at its existing delivery point near Herndon, Virginia. It is Applicant's understanding that Washington would seek an amendment to its gas purchase agreement with Transco to provide for the delivery of a portion of its gas entitlement at Spring Vale, and that Transco would seek the necessary certificate authorization.

It is stated that Washington's thermal imbalance problem, as well as other utilization problems resulting from the introduction of revaporized LNG, has been the subject of proceedings in *Columbia Gas Transmission Corp., et al.*, Docket Nos. RP78-20, *et al.* However, in order to facilitate matters in that pending proceeding, Applicant states that the parties thereto have indicated that they would not oppose an application by Applicant to render, at no charge to Washington, the herein described transportation service. Accordingly, Applicant proposes to render the subject transportation service at a rate of one dollar per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on it own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31660 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC79-142]

El Paso Natural Gas Co.; Petition for the Institution of a Proceeding and for a Declaratory Order

October 5, 1979.

Take notice that on September 25, 1979, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. TC79-142 a petition pursuant to § 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.7) for the institution of a proceeding and for a declaratory order, all as more fully set forth in petition which is on file with the Commission and open to public inspection.

El Paso requests the Commission to institute a proceeding to inquire into:

(i) The effect of the provisions of El Paso's FERC Gas Tariff, including provisions of certain service agreements incorporated by reference therein, on El Paso's obligation to deliver gas under service agreements and certificates of public convenience and necessity issued or approved by the Commission;

(ii) The effect of Commission orders, rules and regulations and El Paso's FERC Gas Tariff on El Paso's obligation to inform its customers and the Commission of future gas curtailments; and

(iii) The effect of an award of damages against El Paso arising from its curtailment of gas service on El Paso's service obligations under Section 4 of the Natural Gas Act, and on the Commission's responsibilities under Sections 4, 5, and 7 of such Act.

El Paso states that since 1971 it has been involved in proceedings before the Commission and before the United States Court of Appeals in which the

issues of how best to protect the high priority requirements of El Paso's east-of-California (EOC) customers, and how best to allocate El Paso's gas supplies among all of its customers during a now-prolonged period of gas shortages have been, and are presently being litigated. El Paso further states that in 1978, the City of Willcox, Arizona, and Arizona Electric Power Cooperative, Inc. (AEPCO) filed an action against El Paso in the United States District Court for the District of Arizona in which AEPCO claimed damages amounting to nearly $189,000,000. El Paso asserts that these claims arise out of:

(i) certain of El Paso's actions prior to and during the natural gas shortage, which Willcox and AEPCO allege resulted in El Paso's failure to procure and maintain an adequate interstate gas supply;

(ii) the manner in which El Paso has allocated and sold its available interstate gas supply after the development of the gas shortage, and El Paso's utilization of storage and other arrangements to maintain high priority service to its EOC customers during the pendency of the shortage; and

(iii) El Paso's actions in estimating the future availability of gas for its interstate system during the pendency of the gas shortage.

El Paso avers that the damage action filed by AEPCO contains certain claims and issues which are identical to or substantially overlap with claims and issues that have been or are now being litigated at the Commission or at the United States Court of Appeals, and that certain other claims and issues involve the interpretation and application of the Commisison's rules, regulations and orders and of El Paso's FERC Gas Tariff, El Paso's service agreements, and certificates of public convenience and necessity issue to El Paso by the Commission. El Paso accordingly requests that the Commission assert its jurisdiction over these claims and issues pursuant to its unique responsibilities under the Natural Gas Act and in accordance with the doctrine of primary jurisdiction.

El Paso further requests that, on the basis of an evidentiary record developed in the proceedings requested by the instant Petition, the Commission make findings and issue a declaratory order or orders stating that:

(1) The Commission has primary jurisdiction over the issues and matters described in the instant petition and in the memorandum brief in support of said petition;

(2) The literal terms of El Paso's FERC Gas Tariff, El Paso's certificates of public convenience and necessity authorizing El Paso to provide natural gas service to interstate customers, El Paso service agreement with such customers, and the Commission's rules, regulations and orders combine in effect to excuse El Paso's from the payment of damages resulting from El Paso's failure to deliver the volumes of gas specified in such service agreements, provided that El Paso has exercised reasonable diligence to acquire a gas supply sufficient to satisfy the terms of such service agreements;

(3) Within the meaning of its certificates, service agreements, and tariff, El Paso has exercised reasonable diligence to acquire and maintain a gas supply sufficient to satisfy the terms of its jurisdictional service agreements;

(4) The provisions of El Paso's FERC Gas Tariff and the Commission's rules, regulations and orders combine in effect to impose a continuing obligation upon El Paso to make reasonable estimates and projections of future gas supplies, future market requirements, and future anticipated level of gas service;

(5) The projections and estimates of future gas supplies, future market requirements, and future anticipated level of gas service made by El Paso and reported to its customers and to the Commission during the period 1972 through 1977 were reasonable at the time they were made; and

(6) Any award of damages against El Paso for curtailment of gas service would constitute an undue preference and discrimination under the Natural Gas Act and would unduly and adversely affect El Paso's ability to provide nondiscriminatory gas service and the Commission's ability to allocate fairly El Paso's available gas supplies.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31691 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-489]

Florida Gas Transmission Co. and Southern Natural Gas Co.; Application

October 5, 1979

Take notice that on September 12, 1979, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, and Southern Natural Gas Company (SNG), P.O. Box 2563, Birmingham, Alabama 35202 (Applicants), filed in Docket No. CP79-489 an application pursuant to Section 7(c) of Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities in the Matagorda Island Area, Federal Domain, offshore Texas, and authorizing FGT to transport certain quantities of natural gas for SNG, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants indicate that they have executed a gas purchase contract with Koch Industries, Inc., General American Oil Company of Texas and TransOcean Oil Company (Producers) for the purchase of 100 percent of the production from Matagorda Island Blocks 664 and 665, Matagorda Island Area. In order to transport the volumes of gas that Applicants would purchase from Blocks 664 and 665, and gas that may become available to Applicants from blocks adjacent to the subject blocks, Applicants propose jointly to construct, own (50 percent apiece), and operate the following:

(1) approximately 40.0 miles of 24-inch pipeline from Block 665 Matagorda Island Area to a point of interconnection with FGT's existing mainline facilities in Refugio County, Texas, and approximately 1.3 miles of 2-inch pipeline from a caisson in Matagorda Island Block 665 to the production platform in Block 665;

(2) a meter station on the production platform in Matagorda Island Block 665; and

(3) two 1875 horsepower compressors at a point onshore.[1]

The total estimated cost of construction of the proposed facilities is $24,659,000, which cost Applicants would finance initially from internally generated funds,

[1] Applicants state that they would install dehydration facilities pursuant to Section 2.55(a) of the Commission's General Policy and Interpretations (18 CFR 2.55(a)) at an estimated cost of $602,000; and may be required to install liquid removal equipment pursuant to the terms of the gas purchase contracts with the Producers at Applicants' expense (estimated at $1,404,000) if the Producers elect to inject liquid hydrocarbons into the proposed pipeline facilities downstream of Buyer's measuring facilities on Block 665.

and to the extent, if any, permanent financing is required, it would be done as part of Applicants' long-term financing programs.

Proven and probable reserves in Matagorda Island Blocks 664 and 665 are estimated to total 87,800,000 Mcf, with initial deliverability currently estimated at 64,000 Mcf per day, it is asserted. It is indicated that the proposed facilities are capable of transporting all the gas produced from Blocks 664 and 665 and can be expanded to accommodate additional volumes which may become available in areas contiguous or adjacent to the subject blocks.

FGT requests authorization to transport SNG's 50-percent share of gas transported through the proposed facilities, from the point of inteconnection of the facilities proposed herein with its mainline in Refugio County, Texas, to the existing authorized interconnection between FGT's and SNG's facilities near Franklinton, Washington Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to particpate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene if filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31892 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP79-462, CP66-110, *et al.*]

Great Lakes Gas Transmission Co.; Application and Petition To Amend

October 5, 1979.

Take notice that on August 30, 1979, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP79-462 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to render a natural gas transportation service for Michigan Wisconsin Pipe Line Company (Mich Wisc), Natural Gas Pipeline Company of America, and Texas Eastern Transmission Corporation (Shippers) and the construction and operation of minor metering facilities in furtherance of such transportation service. Great lakes filed in Docket No. CP66-110, *et al.*, a petition to amend the order of October 24, 1975, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an amendment to Great Lakes' gas transportation contract with TransCanada Pipelines Limited (TransCanada). The proposals are more fully set forth in the application and petition to amend on file with the Commission and open to public inspection.

Great Lakes states that ProGas Limited, a Canadian company, would sell to Shippers and Tennessee Gas Pipeline Company, a division of Tenneco, Inc. (Tennessee), a total of up to 300,000 Mcf per day of natural gas which would be delivered to Great Lakes by TransCanada at the United States—Canadian international boundary near Emerson, Manitoba (Emerson). Great Lakes would transport these volumes from Emerson to a point of interconnection between the facilities of Great Lakes and Mich Wisc near Farwell, Michigan, or such other points as the parties may mutually agree upon. It is indicated that deliveries of the purchased volumes of gas would commence on or about November 1, 1980 and would extend for a period of up to twenty years, during which time volumes of gas may be decreased subsequent to the fifth year, in accordance with the terms of the gas purchase contracts between Shippers and ProGas.

The transportation service would be performed by Great Lakes without the addition of new facilities except minor metering facilities at the Farwell delivery point. The cost of these facilities is estimated at $1,882,900 which would be financed from internally generated funds together with borrowings from banks under short-term lines of credit, if required.

In order to perform the transportation service, Great Lakes seeks authorization to reduce the contract demand under the TransCanada transportation contract by volumes equivalent to those to be transported by Great Lakes for the account of Shippers. It is stated that with such reduction in the contract demand, Great Lakes would reduce the charges otherwise payable by TransCanada relative to such reductions in volumes. Great Lakes would charge the Shippers for the transportation service the same rate as applicable to TransCanada from time to time under Great Lakes' T-4 Rate Schedule in order that Great Lakes may be kept whole on the revenues that it would lose as a result of reduction of charges payable by TransCanada. Additionally, it is indicated that a fee of 1.0 cent per Mcf would be paid by the Shippers to Great Lakes. This fee is intended to recover Great Lakes' cost of operating and maintaining minor metering facilities to be constructed by Great Lakes and the administrative expenses associated with the transportation services, it is stated.

Any person desiring to be heard or to make may protest with reference to said application and petition to amend should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31693 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-30]

Lo-Vaca Gathering Co.; Application for Adjustment

October 5, 1979.

On July 31, 1979, Lo-Vaca Gathering Company filed with the Federal Energy Regulatory Commission an Application for Adjustment under § 284.143, *et seq.* and Section 311(b) of the Natural Gas Policy Act wherein Lo-Vaca Gathering Company sought permission to sell gas under Section 311(b) of the NGPA on an Mcf basis rather than a Btu basis and to use an alternate billing procedure than that specified in § 284.143 *et seq.* Lo-Vaca also sought an order approving or providing that the prices for such gas conform to the provisions of Section 311(b) of the NGPA and the applicable regulations thereunder.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before October 30, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31694 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-467]

Michigan Wisconsin Pipe Line Co.; Application

October 5, 1979.

Take notice that on September 4, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-467 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide transportation services for Natural Gas Pipeline Company of America (Natural), Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), and Texas Eastern Transmission Corporation (Texas Eastern) and to construct and operate related pipeline and measurement facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests authorization to provide natural gas transportation services for Natural, Tennessee, and Texas Eastern resulting in redeliveries of Natural's and Texas Eastern's gas supplies directly to such parties and redeliveries of Tennessee's gas supplies to Midwestern Gas Transmission Company (Midwestern) for the account of Tennessee. It is indicated that ProGas Limited (ProGas) has contracted to purchase from producers in Alberta, Canada, 2,190,000,000 Mcf of natural gas during the period, November 1, 1980, to October 31, 2000, at a rate of up to 335,000 Mcf per day. Commencing on November 1, 1980, ProGas proposes to export and sell, pursuant to gas sales agreements, gas to Applicant, Natural, Tennessee, and Texas Eastern (Purchasers). Applicant states that the gas to be exported would be purchased from ProGas by the Purchasers at the rate prescribed by the Canadian government from time to time as permitted by the Economic Regulatory Administration (ERA) and the Commission. It is indicated that the current border price is $2.80 (U.S.) per million Btu's.

Applicant states that in accordance with a transportation agreement dated July 6, 1979 between Applicant and Natural it has agreed to take receipt of up to 75,000 Mcf of natural gas per day which Natural would cause Great Lakes Gas Transmission Company (Great Lakes) to deliver at the existing Farwell, Michigan, receipt point for Natural's account, provide transportation for such supplies, and make redeliveries of thermally equivalent volumes to Natural at a point of interconnection between the pipeline systems of Applicant and Natural located in Troy Township, Will County, Illinois. The agreement also provides that Applicant would retain one and one-half percent of the quantities transported to compensate Applicant for its compressor fuel usage, it is stated. It is indicated that Applicant would charge Natural a monthly rate of $2.93 per Mcf for each Mcf of contract demand.

Pursuant to a transportation agreement dated July 6, 1979, between Applicant and Texas Eastern, Applicant has agreed to take receipt of up to 75,000 Mcf of gas per day from Great Lakes at the Farwell receipt point for Texas Eastern's account, provide transportation for such supplies, and make redeliveries of thermally equivalent volumes to Texas Eastern at a proposed point of interconnection between the pipeline systems of Applicant and Texas Eastern located near French Lick, Dubois County, Indiana. Applicant states that the agreement provides that Applicant would retain one and one-half percent of the volumes of gas transported as compensation for its compressor fuel usage in providing the service. As consideration for providing the service, Applicant states that it would charge Texas Eastern a monthly rate of $2.39 per Mcf for each Mcf of contract demand.

Applicant asserts that the arrangement between Applicant and Tennessee covering the receipt, transportation, and redelivery of Tennessee's gas supplies purchased from ProGas utilizes the transportation arrangement between Applicant and Great Lakes to effectuate receipt, transportation, and redelivery of such gas to Applicant at Farwell, Michigan. Applicant states that in accordance with a transportation agreement dated August 16, 1979, between Applicant and Tennessee, it has agreed to take receipt of up to 75,000 Mcf of gas per day which Tennessee would cause TransCanada to deliver to Great Lakes at the Emerson, Manitoba, receipt point. Applicant indicates that it would provide transportation for such supplies via Great Lakes and its own pipeline transmission system and make redeliveries of thermally equivalent volumes to Midwestern for the account of Tennessee at a point of interconnection between the pipeline systems of Applicant and Midwestern for the account of Tennessee located in Channahon Township, Will County, Illinois. It is stated that during the first two yers of service under the agreement, Applicant would redeliver monthly

volumes equivalent to those received for the account of Tennessee. After the first two years, Applicant states the transportation service would be on a daily firm basis which would require the installation of new pipeline and related facilities. The transportation agreement provides that Applicant would retain one and one-half percent of all volumes of gas transported as compensation for its compressor fuel usage, it is stated. Applicant asserts it would charge Tennessee a rate of 5.5 cents for each Mcf redelivered for its account during the first two years of the agreement and thereafter, a monthly demand charge predicated on the cost of service of the new facilities required to provide the service on a daily firm basis. The agreement also provides that Tennessee would reimburse Applicant for its *pro rata* share of the charges imposed by Great Lakes.

The application indicates that the interconnection between the pipeline systems of Applicant and Midwestern in Will County, Illinois, comprises a single 8-inch meter run having a capacity of approximately 50,000 Mcf of gas per day. Pursuant to the transportation agreement between Applicant and Tennessee, the parties contemplate that up to 75,000 Mcf of gas per day to be available for redelivery. In order to provide the required metering capacity at the redelivery point, Applicant states that it is requesting authorization to construct and operate an additional 8-inch meter run. Applicant estimates the cost of the additional metering would be $91,910 which would be financed from funds on hand. As further provided in the transportation agreement between it and Tennessee, Tennessee has agreed to pay a monthly metering charge of $9,708, it is stated. Applicant also requests authorization to construct and operate a new measurement station to be located near French Lick, Indiana, in order to effectuate redelivery of the gas supplies which Texas Eastern would purchase form ProGas. It is indicated that the station would comprise two 10-inch meter runs and associated appurtenances which Applicant estimates to cost $475,130.

In order to provide firm service for Natural and Texas Eastern, Applicant states that it proposes to construct and operate an aggregate of 12.1 miles of 42-inch diameter pipeline loop in Michigan and Indiana. The pipeline loop would comprise a 9.5-mile segment to be located in Michigan between Applicant's Hamilton and Bridgman compressor station, and a 2.6-mile segment to be located in Indiana between Applicant's Bridgman and St. John compressor stations. Applicant estimates that the aggregate cost of pipeline loop would be $14,137,200. Applicant states that the total cost of the facilities which also includes additional metering facilities at Applicant's interconnection with Great Lakes at Farwell, Michigan, to be $15,917,080, which would be financed initially with treasury funds and other funds generated internally, together with borrowings from banks under short-term lines of credit as required.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31695 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-495]

Michigan Wisconsin Pipe Line Co.; Application

October 5, 1979.

Take notice that on September 20, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-495 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide a natural gas transportation service for Columbia Gas Transmission Corporation (Columbia) and Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that Columbia and Transco have acquired the preferential right to purchase 22 percent and 20 percent, respectively, of the gas reserves underlying South Marsh Island Area Block 146, offshore Louisiana. Applicant states it is advised that Columbia has entered into a gas purchase contract with OXY Petroleum, Inc. (OXY) dated March 22, 1979, covering the purchase of gas attributable to OXY's 14 percent interest in the block, and has entered into a gas purchase and sales agreement with Mono Power Company (Mono) dated June 1, 1979 covering the purchase of gas attributable to Mono's percent interest.

Applicant states that pursuant to a transportation agreement dated July 27, 1979, between Applicant and Columbia, Applicant has agreed to take receipt, in South Marsh Island Area Block 146, offshore Louisiana, for the account of Columbia, of up to 3,300 Mcf per day of gas, provide transportation onshore for such supplies, and make redeliveries of equivalent volumes to Columbia Gulf Transmission Company (Columbia Gulf) for the account of Columbia at an interconnection of the facilities of Applicant and Columbia Gulf located at Applicant's Patterson Compressor Station in St. Mary Parish, Louisiana. Applicant states that the quantities of gas redelivered by it to Columbia Gulf would be reduced by one percent as compensation for compressor fuel usage. As consideration for providing the transportation service, Applicant states that Columbia has agreed to pay it a monthly transportation charge equal to the contract demand multiplied by a demand charge of $9.52 per Mcf.

The application indicates that pursuant to a transportation agreement dated July 23, 1979, between Applicant and Transco, Applicant has agreed to

take receipt in Block 146 for the account of Transco, of up to 5,400 Mcf of gas per day, provide transportation onshore for such supplies, and make redeliveries of equivalent volumes to Transco at either the tailgate of Mobile Oil Corporation's Cameron Meadows Processing Plant located in Cameron Parish, Louisiana, and/or at an existing interconnection of the facilities of Applicant and Transco located near Applicant's North Tepetate Compressor Station located near Euncie, Louisiana. Applicant states that the quantities of gas redelivered by it to Transco would be reduced by one and four-tenths percent as compensation for compressor fuel usage. Applicant further states that consideration for providing the transportation service would be $11.06 per Mcf paid by Transco on a monthly basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31696 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-7]

Michigan Wisconsin Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 5, 1979.

Take notice that Michigan-Wisconsin Pipe Line Company ("Michigan Wisconsin"), on October 1, 1979, tendered for filing with the Federal Energy Regulatory Commission, Second Revised Sheet Nos. 31, 32, 33, 34, 35, 36 and Original Sheet Nos. 37-A and 68 proposing changes in its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1979.

Michigan Wisconsin states that pursuant to Order No. 29, issued May 2, 1979, at Docket No. RM79-15, Final Regulation for the Implementation of Section 401 of the Natural Gas Policy Act, Michigan Wisconsin has filed proposed tariff revisions designed to alter the priority-of-service categories under Section 9.4 of its tariff to: (1) expand Priority 1 to include new high priority uses; (2) establish a new Priority 2 for essential agricultural uses; and (3) renumber existing Priorities 2 through 6 as Priorities 3 through 7.

Copies of the filing were served upon Michigan Wisconsin's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31697 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. TC80-3, TC80-4]

Midwestern Gas Transmission Co.; Tariff Filing

October 5, 1979.

Take notice that on October 1, 1979, Midwestern Gas Transmission Company (Midwestern), tendered for filing in Docket Nos. TC80-3 and TC80-4 proposed changes in its FERC Gas Tariff, pursuant to Section 401 of the Natural Gas Policy Act of 1978 (NGPA) and Section 281.204 of the Federal Energy Regulatory Commission's (Commission) Regulations in order to comply with the requirement prescribed by the Commission's Permanent Curtailment Rule, Order No. 29 issued May 2, 1979 (18 CFR Part 281).

Section 281.204 of the Commission's regulations requires interstate pipelines to file no later than October 1, 1979, tariff sheets containing a curtailment plan and incorporating therein an index of the high-priority and essential agricultural use entitlements of each of their customers, and the establishment of a Data Verification Committee. Midwestern requests that it be permitted to revise its FERC Gas Tariff, Third Revised Volume No. 1 for its Northern and Southern Systems,[1] to provide for the protection of high-priority and essential agricultural uses in the manner contemplated by the NGPA and the Commission's Regulations. The revised tariff sheets for Midwestern's Northern System, contained in Section 3 of Article XX of the General Terms and Conditions of Third Revised Volume No. 1, and for Midwestern's Southern System, contained in Section 3 of Article XIX of the General Terms and Conditions of Third Revised Volume No. 1, provide for: (1) the expansion of existing priority 1 to include all high-priority uses; (2) the establishment of a new priority 2 for essential agricultural uses; and (3) the renumbering of existing priorities 2 through 9 as priorities 3 through 10.

Midwestern states that Original Sheet Nos. 118 through 134 for the Northern System, and Original Sheet Nos. 109 through 117 for the Southern System, reflect an Index of End-Use Volumes pursuant to Section 281.204(a) and 281.204(b) of the Commission's Regulations.

Midwestern further states that this filing includes the final report of its Northern and Southern System Data Varification Committee and that copies of the filing have been mailed to all of

[1] Midwestern has filed its revised tariff sheets for its Northern System in Docket No. TC80-4, and for its Southern System in Docket No. TC80-3.

its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 19, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve ot make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31698 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-14]

Mississippi River Transmission Corp.; Tariff Filing Pursuant to Order No. 29

October 5, 1979.

Take notice that on September 28, 1979, Mississippi River Transmission Corporation (Mississippi) tendered for filing pursuant to Order No. 29 and § 281.204 of the Commission's Regulations the following sheets of its FERC Gas Tariff, First Revised Volume No. 1:

Sixth Revised Sheet No. 23
Second Revised Sheet No. 23A
Second Revised Sheet No. 23B
Second Revised Sheet No. 23C
Second Revised Sheet No. 23D
Second Revised Sheet No. 23E
Second Revised Sheet No. 23F
Second Revised Sheet No. 23G
Original Sheet No. 35
Original Sheet No. 36
Original Sheet No. 37
Original Sheet No. 38
Original Sheet No. 39

The sheets are proposed to be effective November 1, 1979.

Mississippi states that the filing is being made in accordance with the FERC's permanent curtailment rule adopted by Order No. 29 issued May 2, 1979 establishing a system of priorities for high-priority and essential agricultural use requirements pursuant to the provisions of Section 401 of the Natural Gas Policy Act of 1978. Mississippi further states that the tariff sheets reflect the integration of these priorities into Mississippi's curtailment plan and include indexes of entitlements with respect thereto that are based upon data submitted by Mississippi's customers in accordance with the provisions of the FERC's regulations and which have been reviewed by Mississippi's Data Vertification Committee.

Mississippi notes that the proposed tariff sheets also remove from Mississippi's tariff the interim provision for the protection of high-priority and essential agricultural use requirements now in Mississippi's curtailment plan.

Any person desiring to be heard or to protect said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31699 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-480]

Northwest Pipeline Corp.; Application

October 5, 1979.

Take notice that on September 10, 1979, Northwest Pipeline Corporation (Applicant), 315 East Second South, Salt Lake City, Utah, 84111, filed in Docket No. CP79-480 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1980, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, or to connect with the facilities of an intrastate pipeline authorized to make a sale or assignment under Section 311(b) or 312 of the Natural Gas Policy Act of 1978 (NGPA), or to connect Applicant's transmission system with the system of another company in order to effectuate the transportation of volumes sold or assigned under Section 311 or 312 of the NGPA, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplied of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant and in effectuating the sale or assignment of volumes, or transporation of such volumes, under Sections 311(b) and 312 of the NGPA.

Applicant states that the total cost of the facilities proposed to be constructed will not exceed $12,000,000, with the total cost of any single project not to exceed $12,400,00 which cost Applicant would finance through working funds, supplemented, as necessary, by short-term borrowings.

Applicant realized that the requested single project cost exceeds the single project cost limitation prescribed under Section 157.7(b)(ii) of the Commission's Regulations. Therefore, Applicant requests waiver of said section in order to increase its single project limit from $1,500,000 to $2,400,000. Applicant states that the request to increase its single project cost is based on the fact that inflation and the increased real cost of constructing pipelines has seriously eroded the scope of work that may be completed with a single project cost limit of $1,500,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdication conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31700 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-481]

Northwest Pipeline Corp.; Application

October 5, 1979.

Take notice that on September 10, 1979, Northwest Pipeline Corporation (Applicant), 315 East Second South, Salt Lake City, Utah 84111, filed in Docket No. CP79-481 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction, removal, and relocation and for permission for and approval of the abandonment, during the calendar year 1980, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The purpose of this budget-type authorization is to enable Applicant to act with reasonable dispatch in the construction and abandonment of facilities which will not result in changing Applicant's system salable capacity from that authorized prior to the filing of the instant application.

The total cost of the proposed construction, relocation, removal or abandonment of field compression facilities would not exceed $3,000,000, with no single project to exceed $1,000,000. Applicant realizes that the requested single project limit exceeds the amounts prescribed under Section 157.7(g)(iii) of the Commission Regulations. Therefore, Applicant requests waiver of said section in order to increase its single project limit from $500,000 to $1,000,000. Applicant states that its request for the increase in the single project cost is based on the following: (a) inflation and the increased real cost of construction has seriously eroded Applicant's ability to keep its single project costs within the specified $500,000 limit; (b) Applicant must install and operate large horsepower compressor units because of the low pressure and low permeability of the producing formations that are unique to the Rocky Mountain area; (c) Applicant's widespread and remote compressor locations tend to increase the installation costs; (d) because of the time necessary for the field operating personnel to reach the site, additional safeguards, such as fire detection and automatic shut-down features must be included in the basic compressor packages; and (e) the compression facilities must be designed to compensate for the harsh environment of the gas fields in the areas where Applicant conducts most of its gas gathering operations. Applicant asserts that while many of these considerations are site specific, they contribute to an increased cost per installed horsepower and limit Applicant's flexibility to adjust timely its budget-type facilities under the present $500,000 limit.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31674 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER76-149 and E-9537]

Public Service Company of Indiana; Compliance Filing

October 5, 1979.

The filing company submits the following:

Take notice that on September 18, 1979, Public Service Company of Indiana (PSI) filed revised tariffs pursuant to Ordering Paragraph (C) of the Commission's "Opinion No. 44, Opinion and Order on Rate Increase," dated June 28, 1979, and pursuant to Ordering Paragraph (A) of the Commission's "Order Denying Application for Rehearing and Order on Remand," dated August 27, 1979.

As support of the required rate level, PSI also filed revised cost of service data in the form of revised Statement M and revised Statement N, and rate comparisons for all jurisdictional customers showing the effect of the application of the revised tariffs to the customers' billing determinates for Period II.

PSI's proposed revised tariffs include all stipulations and mandated adjustments per PSI's Compliance Filing dated September 30, 1977, Initial Decision of the Administrative Law Judge in FERC Docket No. ER-76-149, dated June 20, 1978, and Opinion and Order on Rate Increase, FERC Opinion No. 44, dated June 28, 1979.

PSI further submits that the revised tariffs filed herewith have been designed on the same cost allocation methodology as PSI employed in the revised tariffs accepted for filing by the Commission in its "Order Accepting in Part, Rejecting in Part Compliance Filing," dated November 9, 1978. PSI's customers are the City of Crawfordsville, City of Peru, City of Washington, City of Logansport, City of Frankfort, and the Hoosier Energy Division.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street,

N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before October 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31675 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-12]

South Georgia Natural Gas Co.; Settlement Offer

October 5, 1979

On October 1, 1979, South Georgia Natural Gas Company (South Georgia) filed pursuant to Section 1.18(e)(1), of the Commission Rules of Practice and Procedure a settlement offer, which it believes to be supported by the majority of its customers and which it recommends be approved and adopted by the Commission as being in conformity with the provisions of Section 401 of the Natural Gas Policy Act of 1978 (NGPA) and for purposes of implementing the Commission's Order No. 29.

South Georgia also elects to exercise its option pursuant to § 281.204(a)(2) to make its tariff sheets effective December 1, 1979, and it is for this purpose filing herewith First Revised Sheet No. 34A to its FERC Gas Tariff which continues the Interim Curtailment Rule issued in Docket No. RM79-13 through November 30, 1979. South Georgia does request, however, that the Commission approve the settlement plan for implementing Order No. 29 as soon as possible and that upon such approval that South Georgia be authorized to cancel First Revised Sheet No. 34A effective as of the date the tariff sheets implementing the settlement plan are made effective.

The modifications to South Georgia's existing curtailment plan are set out in the following pro-forma tariff sheets and Index of Requirements to South Georgia's FPC Gas Tariff First Revised Volume No. 1 that were attached to its offer of settlement:

First Revised Sheet No. 24, Superseding Original Sheet No. 24
First Revised Sheet No. 26, Superseding Original Sheet No. 26
Original Sheet No. 26A
First Revised Sheet No. 27, Superseding Original Sheet No. 27
First Revised Sheet No. 28, Superseding Original Sheet No. 28
First Revised Sheet No. 44, Superseding Original Sheet No. 44
First Revised Sheet No. 45, Superseding Original Sheet No. 45
Original Sheet No. 46
Original Sheet No. 47

All of the above sheets have an effective date of December 1, 1979. First Revised Sheet No. 34A also included with the filing has an effective date of November 1, 1979.

The basic modifications proposed by South Georgia for implementing Order No. 29 are reflected in First Revised Sheet No. 24, Superseding Original Sheet No. 24, which sets forth all of the priority-of-service categories in the proposed plan attached to its offer of settlement which it evidently believes to be in conformity with Section 401 of the NGPA. These priority-of-service categories as set forth in that sheet are as follows:

8.2 Curtailment Priorities:

Should Seller have a deficiency in gas supplies needed to fulfill the total gas requirements of its system, Seller shall curtail deliveries of gas to its customers in accordance with the priority-of-service categories, with category (9) being the lowest priority:

(1) High Priority Requirements.

(2.1) Summer Season (April 1–October 31) Essential Agricultural Use Requirements.

(2.2) Large Commercial requirements (50 Mcf or more on a peak day), firm industrial requirements for plant protection, feedstock and process needs, and pipeline customer storage injection requirements.

(3) All industrial requirements not specified in (2.1), (2.2), (4), (5), (6.1), (6.2), (7), (8), or (9).

(4) Firm industrial requirements for boiler fuel use at less than 3,000 per day, but more than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(5) Firm industrial requirements for large volume (3,000 Mcf or more per day) boiler fuel use where alternate fuel capabilities can meet such requirements.

(6.1) Winter Season (November 1–March 31), Essential Agricultural Use Requirements.

(6.2) Interruptible requirements of more than 300 Mcf per day, but less than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(7) Interruptible requirements of intermediate volumes (from 1,500 Mcf per day through 3,000 Mcf per day), where alternate fuel capabilities can meet such requirements.

(8) Interruptible requirements of more than 3,000 Mcf per day, but less than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

(9) Interruptible requirements of more than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

It should be noted that Essential Agricultural Uses in the plan proposed in South Georgia's offer of settlement are either in service Priority 2.1 or 6.1 depending upon the season of the year.

Copies of South Georgia's proposed offer of settlement were served upon all its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31676 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-25]

Stallworth Oil & Gas Co., Inc.; Application for Adjustment

October 10, 1979.

On September 4, 1979, Stallworth Oil & Gas Company, Inc. (Applicant) filed with the Federal Energy Regulatory Commission an Application for an Adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), wherein the Applicant seeks relief from the maximum lawful pricing provisions of the NGPA.

Applicant proposes to re-enter, redrill and deepen a well which was plugged and abandoned on February 22, 1960, when no oil or gas was encountered. Applicant requests that it be granted an adjustment under section 502(c) to the extent that the previous drilling, i.e., prior to February 19, 1977, might prevent the well from being qualified as a new onshore production well under section

103 of the NGPA. Applicant alleges that it cannot economically perform such re-entry, redrilling and deepening operations unless it receives the maximum lawful price for a new onshore production well.

The procedures applicable to the conduct of the adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before October 30, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31684 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-11]

Tennessee Natural Gas Lines, Inc.; Tariff Filing Pursuant To Order No. 29

October 5, 1979.

Take notice that on October 1, 1979, Tennessee Natural Gas Lines, Inc. (Tennessee Natural), 2008 Parkway Towers, Nashville, Tennessee 37219, tendered tariff sheets for filing pursuant to Sections 281.201 through 281.215 of the Commission's Rules and Commission Order No. 29, issued May 2, 1979, in Docket No. RM79-15 as modified and amended. The filed tariff sheets are:

First Revised Sheet Nos. 24B-24F
Original Sheet Nos. 32-34

and are intended to be effective November 1, 1979, to provide for revisions in the pipeline's curtailment plan regarding deliveries of natural gas for high-priority and essential agricultural users. Tennessee Natural states that said tariff sheets (1) expand existing priority 1 to include all high-priority uses; (2) establish a new priority 2 for essential agricultural uses; and (3) renumber existing priorities 2 through 9 as priorities 3 through 10, all as more fully explained in the filing with the Commission and available for public inspection. Said filing also includes the final report of the Data Varification Committee.

Any person desiring to be heard or to protest said filing should, on or before October 19, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31677 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-476]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

October 5, 1979.

Take notice that on September 6, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-476 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 6.4 miles of 8⅝-inch pipeline and related metering facilities in the South Marsh Island, South Addition Area (SMI), offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the proposed 8⅝-inch pipeline is to originate at a platform owned by Tenneco Oil Company (Tenneco) and Texaco Inc. (Texaco) located in SMI 116 offshore Louisiana and would extend to an 8-inch subsea side valve on Michigan Wisconsin Pipeline Company's (Mich Wisc) 24-inch pipeline in SMI 108 where the gas would be deliverable for the account of Tennessee to Mich Wisc.

Tennessee states that the proposed facilities would permit the receipt of volumes of gas to be purchased by Tennessee in SMI 116 from Tenneco and Texaco. Tennessee estimates that approximately 23,061,000 Mcf of recoverable gas reserves, as of January 1, 1979, would be available to Tennessee from SMI 116 and that the total maximum daily deliverability would be 20,000 Mcf of gas per day.

Tennessee indicates that the cost of the proposed facilities is estimated to be $3,256,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31678 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-2]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing Pursuant To Order No. 29

October 5, 1979.

Take notice that on October 1, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P. O. Box 2511, Houston, Texas 77001, tendered tariff sheets for filing pursuant to sections 281.201 through 281.215 of the Commission's Rules and Commission Order No. 29, issued May 2, 1979, in Docket No. RM79-15, as modified and amended. The filed tariff sheets are:

Ninth Revised Volume No. 1

Second Revised Sheet No. 213F and 213K1
Third Revised Sheet No. 2131
Fourth Revised Sheet No. 213J
Fifth Revised Sheet No. 213K
First Revised Sheet No. 213K6

Original Volume No. 1A
Original Sheet Nos. 1 through 138

and are intended to be effective November 1, 1979, to provide for revisions in the pipeline's curtailment plan regarding deliveries of natural gas for high-priority and essential agricultural uses. Tennessee states that said tariff sheets (1) expand existing priority 1 to include all high-priority uses; (2) establish a new priority 2 for essential agricultural uses; and (3) renumber existing priorities 2 through 9 as 3 through 10, all as more fully set out in the filing with the Commission and available for public inspection. Said filing also includes an Index of End-Use Volumes for all direct and resale customers except Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, Inland Gas Company, Midwestern Gas Transmission Company, and Texas Gas Transmission Corporation. It is said that these companies did not provide their final data in time for inclusion in this filing but Tennessee intends to supplement the Index as soon as practicable but in no event later than November 1, 1979. Said data, it is stated, was reviewed by the Data Verification Committee.

Any person desiring to be heard or to protest said filing should, on or before October 19, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D. C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-31679 Filed 10-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. SA80-2, TC80-13]

Transwestern Pipeline Co.; Motion for Approval of Settlement, Waiver of Filing Requirements and Interim Adjustment

October 5, 1979.

Take notice that on October 1, 1979, Transwestern Pipeline Company (Transwestern), P.O. Box 2521, Houston, Texas 77001, filed in Docket Nos. SA80-2 and TC80-13 a motion for approval of a proposed settlement allowing an adjustment, under Section 502(c) of the Natural Gas Policy Act (NGPA) wherein Transwestern seeks exemption from the tariff filing requirements of Section 281.204 of the Commission's Regulations, all as more fully set forth in the motion for approval of settlement, waiver of filing requirements and interim adjustment.[1]

Section 281.204 of the Commission's Regulations requires the filing of tariff sheets regarding curtailment plans, the filing of indices of entitlements regarding high-priority and essential agricultural users, the attribution of natural gas, and the establishment of a data verification committee. Under the proposed Stipulation and Agreement, Transwestern would not be required to file the draft tariff sheets and index of entitlement contemplated by Section 281.204. The tariffs and end-use currently utilized by Transwestern to administer curtailments would not be modified except to remove the time limitation currently incorporated in Section 11.6 of the General Terms and Conditions of Volume No. 1 of Transwestern's FERC Gas Tariff.

The proposed Stipulation and Agreement further provides that if in the future any party to the agreement feels that changes in Transwestern's curtailment program are required in order to comply with Section 401(a) of the NGPA, Transwestern will promptly notify the Commission and its customers, and any party may request the convening of a settlement conference to determine whether changes in Transwestern's curtailment procedures are required in order to comply with Section 401(a) of the NGPA. Transwestern states that no purpose would be served by requiring modification of an end-use data base that has been utilized by Transwestern for approximately six years.

Transwestern further requests that the Commission, pursuant to Section 1.41(m) of its Regulations, grant interim relief relieving Transwestern of its current obligation to file revised tariff sheets on November 1, 1979, pending a ruling on the proposed settlement and request for adjustment.

Any person desiring to participate in this proceeding shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.14). All petitions to intervene in Docket No. SA80-2 must be filed on or before October 30, 1979. Pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, comments on the settlement, Docket No. TC80-13, will become due by October 22, 1979.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-31680 Filed 10-12-79; 8:45 am]
BILLING CODE 6450-01-M

[1] The settlement has been docketed as TC80-13 and the request for interim adjustment has been docketed as SA80-2.

[Docket No. ER76-672]

Virginia Electric & Power Co.; Contract Supplement

October 5, 1979.

The filing company submits the following:

Take notice that on September 26, 1979, Virginia Electric and Power Company (VEPCO) tendered for filing a Contract Supplement, dated August 20, 1979, to the Rate Contract between VEPCO and the Prince George Electric Cooperative.

Said Supplement requests the Commission's authorization for connection of the new delivery point, designated as Rowanta Delivery Point, located in Prince George County, Virginia.

VEPCO requests an effective date for the new delivery point as that of the date of connection of the new facilities, which is expected to occur sometime during October, 1979. VEPCO agrees to notify the Commission of the effective date to be placed in each copy of the Supplement.

VEPCO requests that the Commission waive the timely filing requirements as it was unable to make a timely filing due to the amount of time required for the preparation and execution of the Supplement.

VEPCO further requests waiver of the required billing data as there will be no significant increase in the unit cost of electricity to the Prince George Electric Cooperative as a result of the planned connection of facilities.

Any person desiring to be heard or to protest said application should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before October 22, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make

protestants parties to the proceeding. Persons wishing to become parties to a proceeding must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-31631 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Environment

Environmental Advisory Committee; Change in Notice of Meeting

The tentative agenda for the Environmental Advisory Committee meeting announced for October 22 and 23, 1979, (44 FR 57154, 10/4/79) is revised as follows:

Monday, October 22, 1979

9:00 a.m. to 12:00

Welcome and Introductions
Report of the Subcommittee on Demand Projections
Discussion
Public Comment and Questions

1:00 p.m. to 4:30 p.m.

Committee Business Report
Report of the Subcommittee on Synthetic Fuels
Public Comment and Questions

Tuesday, October 23, 1979

9:00 a.m. to 12:00

Presentation by Amory Lovins
Public Comment and Questions

1:00 p.m. to 4:30 p.m.

New Business
Public Comment and Questions

Issued at Washington, D.C., October 9, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-31671 Filed 10-12-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; July 2 through July 6, 1979

Notice is hereby given that during the period July 2 through July 6, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except federal holidays.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

October 5, 1979.

Proposed Decisions and Orders

Kenneth L. Tipps, Denver, Colo., DXE-5532, crude oil

Kenneth L. Tipps filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Marick 1-A Property for the benefit of the working interest owners at upper tier ceiling prices. On July 3, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Marick 1-A Property.

Perfection Products, Waynesboro, Ga., DEE-2128
Preway, Inc., Wisconsin Rapids, Wis., DEE-2316
Louisville Tin & Stove, Louisville, Ky., DEE-2399
Williams Furnace Co., La Mirada, Calif., DEE-2228
Peerless Mfg. Corp., Louisville, Ky., DEE-2798
United States Stove, Chattanooga, Tenn., DEE-3140
Martin Industries, Florence, Ala., DEE-3440
Locke Stove Co., Kansas City, Mo., DEE-3441
Readybuilt Products, Baltimore, Md., DEE-2400

Suburban Mfg. Co., Dayton, Tenn., DEE-2322 testing requirements

Perfection Products Company and nine other firms filed Applications for Exception from the provisions of 10 CFR, Part 430, Appendix O. The exception request, if granted, would permit the firms to market vented gas space heaters with step-opening control values, vented gas space heaters with modulating and/or manual control values, and vented oil heaters with vaporizing-type burners without regard to the testing provisions of Part 430, Appendix O. On July 3, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be denied with respect to vented gas space heaters with step-opening control values, and granted with respect to the other types of space heaters.

Wally's Oil Co., Wilton, Minn., DEE-1291, Nos. 1 and 2 heating oil

Wally's Oil Co. filed an Application for Exception from the provisions of 10 CFR 212.93. The exception request, if granted, would permit Wally's to retain a portion of the revenues which the firm has agreed to refund under the terms of a Consent Order which it entered into with the DOE Region V Office on May 2, 1978. On July 3, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of July 2 through July 6, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case No., and Location

Carol Davis' Mini Market, DEE-3555, Whittier, Calif.
Cogan's Gulf & Pac 6-12, DEE-3475, Kentwood, La.
Hooten's Exxon, DEE-5190, Emory, Tex.
Langley Park Amoco, DEE-4709, Hyattsville, Md.
Vic's Arco Service, DEE-4838, Santa Cruz, Calif.
Benson General Store, DEE-5851, Benson, Vt.
Sinclair Oil Corp., DEE-5522, Washington, D.C.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of July 2 through July 6, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The

exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case No., and Location

Nancy Starr Mobil, DEE-4137, Martinez, Calif.
Enterprise Shell Service Station, DEE-4341, Oxnard, Calif.
K & K, Inc., DEE-4946, Plattsville, Ala.

[FR Doc. 79-31660 Filed 10-12-79; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of Aug. 17 Through Aug. 24, 1979

Notice is hereby given that during the week of August 17, 1979 through August 24, 1979 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Melvin Goldstein,
Director, Office of Hearings and Appeals.
October 5, 1979.

List of Cases Received by the Office of Hearings and Appeals

[Week of Aug. 17 through Aug. 24, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 17, 1979	Cotten, Day, and Doyle, Washington, D.C.	DFA-0596	Appeal of Freedom of Information Request Denial. If granted: The July 17, 1979, Information Request Denial issued by the DOE Freedom of Information Officer, Region X, would be rescinded and Cotten, Day, and Doyle would receive access to certain DOE documents.
Aug. 17, 1979	Marathon Oil Company, Washington, D.C.	DEA-0595, DES-0595, DST-0595	Appeal of a Redirection Order, Request for Stay, and Request for Temporary Stay. If granted: The July 31, 1979, Redirection Order issued to Marathon Oil Company by the Economic Regulatory Administration, Region IV, regarding Marathon Oil Company's supply obligations to Southland Corporation would be rescinded. Marathon Oil Company would be granted a Stay and Temporary Stay pending a final determination on its appeal.
Aug. 17, 1979	The Farley Company, Hartford, Connecticut	DEE-7899	Exception to Emergency Building Temperature Restrictions. If granted: The Farley Company would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Aug. 20, 1979	Apollo Oil Company, Mountain View, California	DEE-7911, DST-7911	Price Exception, Request for Temporary Stay. If granted: Apollo Oil Company would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline. Apollo Oil company would be granted a Temporary Stay pending a final determination on its Application for Exception.
Aug. 20, 1979	C. Lee Waugh d.b.a. Shamrock Exxon, West Columbia, South Carolina.	DEE-7752	Price Exception. If granted: C. Lee Waugh d.b.a. Shamrock Exxon would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.
Aug. 20, 1979	Champlin Petroleum Company, Tulsa, Oklahoma	DEA-0598, DES-0598	Appeal of Assignment Order, Request for Stay. If granted: The July 10, 1979, Assignment Order issued by the Economic Regulatory Administration, Region VII, regarding Champlin Petroleum Company's supply obligations to Town and Country Food Markets, Inc. would be rescinded. Champlin Petroleum Company would be granted a Stay pending a final determination of its Appeal.
Aug. 20, 1979	Commonwealth Oil Refining Co., Inc., San Antonio, Texas.	DXE-7928	Extension of relief granted in *Commonwealth Oil Refining Co., Inc.* 2 DOE Par. 81,021 (October 17, 1978). If granted: The benefits received by Corco under the Naphtha Entitlements Program would be increased to exactly offset the disparity between the cost of the imported naptha feedstocks utilized by the firm and the weighted average cost of all imported naptha feedstocks utilized in Puerto Rico.
Aug. 20, 1979	E. I. du Pont de Nemours & Co. (Sabine River Works), Orange, Texas.	DEE-7909	Exception to Emergency Building Temperature Restrictions. If granted: E. I. du Pont de Nemours & Company (Sabine River works) would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Aug. 20, 1979	Fairview Esso Servicenter, Elmsford, New York	DEE-7926	Price Exception. If granted: Fairview Esso Servicenter would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.
Aug. 20, 1979	Gasohol, Inc., Santa Barbara, California	DEE-7912	Allocation Exception. If granted: Gasohol, Inc., would receive an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol.
Aug. 20, 1979	Inexco Oil Company, Washington, D.C.	DRD-0264, DRH-0264	Motion for Discovery and Motion for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened with respect to Inexco's Oil Company's Statement of Objections to a Proposed Remedial Order issued to the firm (Case No. DRO-0264).
Aug. 20, 1979	Maria Reichmanis, Syracuse, New York	DFA-0604	Appeal of Information Request Denial. If granted: The August 16, 1979, Information Request Denial issued by the Office of Electrical Energy Systems would be rescinded and Maria Reichmanis would receive access to the "Minutes of the Eight Meeting of the Interagency Committee".
Aug. 20, 1979	Motherhood Maternity Shops, Santa Monica, California	DEE-7917	Exception to the Emergency Building Restrictions. If granted: Motherhood Maternity Shops would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Aug. 20, 1979	Naph-Sol Refining Company, Inc., Muskegon, Michigan.	DEE-7924	Allocation Exception. If granted: Naph-Sol Refining Co., Inc., would receive an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Aug. 20, 1979	Russ DeVore Texaco Service Station, Big Spring, Texas.	DEE-7908	Price Exception. If granted: Russ DeVore Texaco Service Station would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.
Aug. 20, 1979	Seddon-Tremont Service Station Corp., Bronx, New York.	DEE-7925	Price Exception. If granted: Seddon-Tremont Service Station Corp. would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Aug. 17 through Aug. 24, 1979]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 20, 1979	Texaco, Inc., White Plains, New York	DEE-7209, DEL-7209.	Price Exception, Application for Temporary Exception. If granted: Texaco, Inc., would receive an exception from the provisions of 10 CFR 212 permitting the firm to pass through incremental expenses relating to the blending, storage, distribution, and marketing of gasohol. The firm would be granted a Temporary Exception pending a final determination on its Application for Exception.
Aug. 20, 1979	Trends Publishing, Inc., Washington, D.C.	DFA-0585	Appeal of Information Request Denial. If granted: Trends Publishing, Inc., would receive access to certain DOE documents.
Aug. 20, 1979	Trends Publishing, Inc., Washington, D.C.	DFA-0597	Appeal of Information Request Denial. If granted: The August 8, 1979, Information Request Denial issued by the Research and Development Coordination Counsel would be rescinded and Trends Publishing, Inc. would receive access to the "Report of *ad hoc* Experts Group".
Aug. 20, 1979	Chevron U.S.A. Inc., Kern County, California	DEE-7939	Price Exception (Section 212.73). If granted: Chevron U.S.A. Inc., would be permitted to sell the crude oil produced from the KCL 63 Stevens Property located in Greenly Field, Kern County, California, at market prices.
Aug. 21, 1979	Gulf Oil Corporation, Houston, Texas	DEE-7936	Price Exception (Section 212.73). If granted: Gulf Oil Corporation would be permitted to sell the crude oil produced from the Ruth Fleming A Lease located in St. Martin Parish, Louisiana, at upper tier ceiling prices.
Aug. 21, 1979	H & H Oil Company, Inc., Dickson, Tennessee	DEE-7993	Allocation Exception. If granted: H & H Oil company would receive an exception from the provisions of 10 CFR 211 permitting the firm to receive an additional allocation of unleaded motor gasoline for the purposes of blending gasohol.
Aug. 21, 1979	Henry Petroleum Corporation, Midland, Texas	DRS-0276	Request for Stay. If granted: Henry Petroleum Corporation would be granted a Stay of the proceedings connected with the May 29, 1979, Proposed Remedial Order issued to the firm by the Economic Regulatory Administration, pending a final determination on the firm's Application for Exception (Case No. DEE-1400).
Aug. 21, 1979	Marathon Oil Company, Findlay, Ohio	DEA-0601	Appeal of an Assignment Order. If granted: The July 17, 1979, Assignment Order issued to Marathon Oil Company by the Economic Regulatory Administration, Region IV, regarding Marathon Oil Company's supply obligations to Lucky Stores, Inc., would be rescinded.
Aug. 21, 1979	P & M Petroleum Management, Denver, Colorado	DXE-7953	Extension of relief granted in *P & M Petroleum Management* 3 DOE Par. (June 20, 1979). If granted: P & M Petroleum Management would be permitted to continue to sell the crude oil produced from the Track #1 well, located in Roosevelt County, Montana, at upper tier ceiling prices.
Aug. 21, 1979	Tom Smith, Houston, Texas	DFA-0600	Appeal of Information Request Denial. If granted: The July 19, 1979, Information Request Denial issued to Tom Smith by the Economic Regulatory Administration, Region VI, Acting District Manager would be rescinded and Tom Smith would receive access to certain DOE documents.
Aug. 21, 1979	Union Oil Company of California, Washington, D.C.	DED-7777	Motion for Discovery. If granted: Discovery would be granted to Union Oil Company of California with respect to an Application for Exception filed on behalf of Barnosky Oils, Inc.
Aug. 21, 1979	Wind Energy Report, Rockville Centre, New York	DMR-0068	Request for Modification/Rescission. If granted: The DOE's July 10, 1979, Decision and Order (Case No. DFA-0449) issued to Wind Energy Report would be modified and Wind Energy Report would receive a waiver of fees incurred with respect to documents released in response to a Freedom of Information Request.
Aug. 22, 1979	Chevron U.S.A. Inc., San Francisco, California	DEH-5462	Motion for Evidentiary Hearing. If granted: Chevron U.S.A. Inc., would be granted an evidentiary hearing with respect to its objection to an Application for Exception filed by Publix Oil Company.
Aug. 22, 1979	Macmillan Ring-Free Oil Company, Inc., Washington, D.C.	DRD-0024	Motion for Discovery. If granted: Discovery would be granted to macmillan Ring-Free Oil Company with respect to its Statement of Objections concerning an Interim Remedial Order for Immediate Compliance issued to Tenneco Oil Company.
Aug. 22, 1979	McGraw-Hill Publications Co., Washington, D.C.	DFA-0599	Appeal of an Information Request Denial. If granted: The July 20, 1979, Information Request Denial issued by the Energy Information Administration would be rescinded and McGraw-Hill Publications Co. would receive access to certain DOE documents.
Aug 22, 1979	Tenneco Oil Company, Houston, Texas	DEH-0068	Motion for Evidentiary Hearing. If granted: An Evidentiary Hearing would be convened with respect to the DOE's June 14, 1979, Interim Decision and Order issued to Publix Oil Company regarding Tenneco Oil Company's supply obligations to Publix Oil Company.
Aug. 22, 1979	Tenneco Oil Company, Houston, Texas	DES-0275	Request for Stay. If granted: Tenneco Oil Company (Tenneco) would be granted a Stay of the DOE's June 14, 1979, Interim Decision and Order issued to Publix Oil Company.(Publix) with respect to Tenneco's supply obligations to Publix.
Aug. 22, 1979	Tenneco Oil Company, Houston, Texas	DMR-0068	Motion for Modification/Rescission. If granted: The DOE's June 14, 1979, Interim Decision and Order issued to Publix Oil Company with respect to Tenneco Oil Company's supply obligations to Publix Oil Company would be modified.
Aug 23, 1979	Convenient Equipment Inc., Louisville, Kentucky	DEE-7950	Exception to the Emergency Building Temperature Restrictions. If granted: Convenient Equipment, Inc., would receive an exception to the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions.
Aug 23, 1979	Fuel Oil Supply and Terminaling, Inc., Washington, D.C.	DFA-0592	Appeal of Freedom of Information Request Denial. If granted: The July 25, 1979, Information Request Denial issued by the Acting District Manager, Southwest District of Enforcement, Economic Regulatory Administration, would be rescinded and Fuel Oil Supply and Terminaling, Inc., would receive access to certain DOE documents.
Aug 23, 1979	Gulf Oil Corporation, Houston, Texas	DFA-0592	Appeal of Information Request Denial. If granted: The August 3, 1979, Information Request Denial issued to Gulf Oil Corporation by the Office of Special Counsel for Compliance would be rescinded and Gulf Oil Corporation would receive access to certain DOE documents.
Aug. 23, 1979	James L. Miller, Tampa, Florida	DFA-0602	Appeal of an Information Request Denial. If granted: The June 26, 1979, Information Request Denial issued by the Acting Administrator of the Energy Information Administration would be rescinded and James L. Miller would receive access to certain DOE data.
Aug. 23, 1979	Vinny's Service Station, Staten Island, New York	DEE-7947	Price Exception. If granted: Vinny's Service Station would receive an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.
Aug. 23, 1979	Richmond-Kill, Staten Island, New York	DEE-7946	Price Exception. If granted: Richmond-Kill would be granted an exception from the provisions of 10 CFR 212 with respect to the pricing of motor gasoline.
Aug. 23, 1979	Shell Oil Company, Houston, Texas	DEA-0603, DES-0603, DST-0603.	Appeal of Assignment Order, Request for Stay, and Request for Temporary Stay. If granted: The August 6, 1979, Temporary Assignment Order issued by the Economic Regulatory Administration, Region VI, regarding the Shell Oil Company's supply obligations to West Texas Utilities would be rescinded.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for motor gasoline

Week of August 17 through August 24, 1979

If granted: The following firms would receive an exception from the activation of the standby petroleum product allocation regulations with respect to motor gasoline.

August 17, 1979

C.F. Spiegal Oil Company, DXE-7896, Missouri.
CH Leasing Corporation, DEE-7726, Massachusetts.
Dennis K. Burke, Inc., DEE-7672, Massachusetts.
Ed's Citgo Station, DEE-7902, Massachusetts.
Fantoni Company, Inc. DEE-7901, Massachusetts.
Lenawee Fuels, Inc. DEE-7897, Michigan.
North Bellmore Exxon, DXE-7973, New York.
Snyders Gateway, Inc., DEE-7894, Pennsylvania.
Triangle Oil Company, DEE-7893, Maryland.
Vickers Petroleum Corp., DEE-7898, Kansas.
Weekly's Exxon Service Station, DXE-7903, California.
Whetstone's Amoco, DEE-7900, Pennsylvania.

August 18, 1979

Link, Lloyd, DEE-7969, Tennessee.

August 20, 1979

ABC Bus Company, Inc., DEE-7916, Massachusetts.
BRD. School Commiss. (Indianapo, DEE-7918, Indiana.
Brilad Oil Co., DEE-8064, Georgia.
Carter's Grocery, DEE-7923, Virginia.
Ell-Bern Service Corporation, DEE-7913, Massachusetts.
Fasgo, Inc., DEE-7922, District of Columbia.
George's Service Station, DEE-7904, California.
Harry's Exxon, DEE-7921, California.
Joe Clark Oil Company, Inc., DEE-7910, Colorado.
Legacy & Savage, DEE-7914, Maine.
North Side Center, DEE-7919, Montana.
P.J. Casey & Son, Inc. DEE-7915, Massachusetts.
Richardson Oil Company, DEE-7907, South Dakota.
Schultz, Tony, DEE-7905, Montana.
Strickland, Mildred, DEE-7906, Mississippi.
Veazey, Z.M., Jr., DEE-7139, Mississippi.
Windermere Chevron, DEE-6380, Florida.

August 21, 1979

Antonio Vricella, DEE-7841, Massachusetts.
Bill's Bourne Bridge Mobil, DEE-7957, Massachusetts.
Cities Service Co (Lake Charles), DEE-7937, Louisiana.
Douthit Standard Service, DEE-7929, Mississippi.
Evergreen Store, DEE-7855, Wisconsin.
F S Services, Inc., DEE-7938, Illinois.
General Aviation Company, DEE-7930, California.
Johnson, Eugene, DEE-7677, Texas.
Lugar's Skelly, DEE-7941, Minnesota.
Rawji's Texaco Service, DEE-8007, California.
Simon's Mini-Mart, DEE-7935, Ohio.
Spring Road Exxon, DEE-7927, North Carolina.
Valley Plaza Std., DEE-7934, Michigan.

August 22, 1979

Adamo, Peter P., DEE-5628, Connecticut.
Best Petroleum Co., Inc., DEE-7942, Massachusetts.
Bolte Oil & Supply, DEE-7972, Nebraska.
Calotex Delaware, Inc., DXE-7943, Delaware.
Hinesley, J. H., DEE-7963, Georgia.
Pic-N-Pay, DEE-7940, Missouri.
The Jerry Cox Company, DEE-7944, South Carolina.

August 23, 1979

Amarada Hess, DEE-7974, District of Columbia.
Farmer's Depot, DEE-7952, Texas.
Forest Hill Chevron, DEE-7951, California.
Happy Valley Exxon Service, DEE-7945, West Virginia.
Kue Bel Enterprised, DEE-7948, Pennsylvania.
Perkin-Elmer Corp., DEE-7978, Connecticut.
Phillips Oil Corp., DEE-7975, Louisiana.

August 24, 1979

Amerada Hess Corp., DEE-7999, District of Columbia.
Seymour Volunteer Fire Depart., DEE-7959, Tennessee.
Skee's Exxon, DEE-7960, North Carolina.

Items retrived 60

[FR Doc. 79-31670 Filed 10-12-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1337-6; PP 8G2028/T198]

Establishment of Temporary Tolerances; Oxyfluorfen

Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, has submitted a pesticide petition (PP 8G2028) to the Environmental Protection Agency (EPA). The petition requests that a temporary tolerance be established for combined residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene) and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities cottonseed; eggs; milk; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 part per million (ppm). (A related document concerning the establishment of a food additive regulation for residues of oxyfluorfen in cottonseed oil appears elsewhere in today's Federal Register.)

Establishment of these temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit (707-EUP-91) that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other relevant material has shown that the requested tolerances are adequate to cover residues resulting from the proposed experimental use, and it has been determined that the temporary tolerances will protect the public health. The temporary tolerances are established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing of safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire October 1, 1981. Residues not in excess of 0.05 ppm remaining in or on cottonseed; eggs; milk; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this perticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Richard F. Mountfort, Acting Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M St., SW, Washington, DC 20460 (202/755-2196).

Dated: September 28, 1979.

(Sec. 408(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j))

Douglas D. Campt,

Acting Director, Registration Division.

[FR Doc. 79-31722 Filed 10-12-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1337-4]

Notice Under Section 125 of the Clean Air Act of Rescheduled Public Hearing; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of rescheduled public hearing and comment period extension

for public participation in EPA's reproposed determination under subsection 125(a) of the Clean Air Act (Act).

SUMMARY: On September 6, 1979 [44 FR 52031] EPA proposed to determine under subsection 125(a), 42 USC 7425(a), that projected local and regional economic and unemployment impacts that would occur if certain Ohio utilities proceed with plans to switch from high sulfur coal to low sulfur coal to comply with sulfur dioxide emission limitations are not sufficiently significant to necessitate action under subsections 125(b) and (c) of the Act. A public comment period was established and scheduled to close December 5, 1979. In addition, a public hearing was scheduled for October 10, 1979 in Cleveland, Ohio.

Many interested persons requested EPA to conduct public hearings in the coal producing southeastern area of Ohio. In order to permit the fullest possible range of public participation from the communities most directly affected by any action under this section of the Act, EPA has cancelled the public hearing scheduled for October 10, 1979 in Cleveland, Ohio. The public hearing will be held instead on November 20, 1979 in St. Clairsville, Ohio. Additionally, the public comment period is extended to December 20, 1979.

DATES: The public comment period for the reproposed determination will remain open until December 20, 1979.

The public hearing on the reproposed determination will be held from 9 a.m. to 4 p.m. on Tuesday November 20, 1979 at the St. Clairsville, Ohio, Sheraton Inn, I-70 Exit 219, St. Clairsville, Ohio 43950.

ADDRESS: Comments or requests for further information should be directed to F.J. Biros, Chief, Technical Support Branch, Division of Stationary Source Enforcement, EN-341, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone 202-755-2560.

(Section 125 of the Clean Air Act as amended August 7, 1979, 42 U.S.C. 7425.)

Issued in Washington, D.C. on October 9, 1979.

Barbara Blum,

Acting Administrator.

[FR Doc. 79-31720 Filed 10-12-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1337-8]

Region III: Ground Water System of a Piedmont Aquifer in Maryland; Request for EPA Determination Regarding Aquifers; Public Hearing Notification

Two petitions have been submitted, one by the Tenmile Creek Conservation Committee and the other by the Clarksburg Community Association, pursuant to Section 1424(e) of the Safe Drinking Water Act, Public Law 93-523, requesting the Regional Administrator of the Environmental Protection Agency to make the determination that a portion of an aquifer underlying Montgomery, Howard, and Frederick Counties, Maryland be designated as the sole or principal drinking water source for the area which, if contaminated, would create a significant hazard to public health. The area, if designated, would encompass the following drainage basins:

(1) *Little Seneca Creek Basin* including Tenmile Creek and Bucklodge Creek as well as Little Seneca Creek to the confluence with Great Seneca Creek.

(2) *Little Monocacy River Basin.*

(3) *Little Bennett Creek Basin* to the confluence with Bennett Creek.

(4) *Bennett Creek Basin* from headwaters only to the confluence with Little Bennett Creek.

(5) *Fahrney Branch Creek Basin* to the confluence with Bennett Creek.

(6) *Patuxent River Basin* from headwaters only to the confluence with Cabin Branch Creek.

(7) *South Branch Patapsco* River Basin from headwaters only to the confluence with Gillis Falls.

The petitions referred to above were printed in the June 8, 1976 edition of the Federal Register on pages 22976-22979.

EPA intends to decide whether to make the requested designation after a complete review of all relevant data and information, and a full opportunity for public participation. In this regard the Agency is developing a full factual record and solicits comments, data, and references to additional sources of information relevant to the determination required by Section 1424(e).

Comments, data, and references in response to this Notice should be submitted in writing to Mr. Benjamin A. Lacy, Chief, Ground Water Protection Section, Region III, Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-9000, Attention: Tenmile Creek Determination, within 60 days of this notice. Information concerning this request for determination will be made available for inspection at the above address and upon request from interested parties.

In addition to considering public comments sent to EPA, the Agency will hold the following public hearing at the date, times, and location shown below:

November 15, 1979, 3:00-5:00 p.m. and 7:00-9:00 p.m., Clarksburg Community Center, 22501 Weems Road, Clarksburg, Maryland.

Persons who wish to present prepared statements at the public hearing are urged to give notice to Mr. Benjamin A. Lacy, at the address previously indicated, prior to the hearing. If possible, written copies of these statements should be submitttd at the hearing for inclusion in the record.

Dated: October 5, 1979.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-31725 Filed 10-12-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Techincal Commission for Marine Services; Renewal of Advisory Committee Charter

The Federal Communications Commission has determined that it is necessary to renew the Radio Technical Commission for Marine Services as a Federal advisory committee for an additional one-year period. The purpose of the RTCM is to advise the FCC and other Federal agencies on maritime communication practices, needs, and present and projected systems looking toward improvements in telecommunication facilities and procedures. The new charter of the RTCM will extend until September 30, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-31713 Filed 10-12-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10423; or may inspect the agreement at the Field Offices located at

New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before October 25, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No. 6010-23.

Filing Party: Charles F. Warren, Esquire, Warren & Associates, P. C., 1100 Connecticut Avenue NW., Washington, D.C. 20036.

Summary: Agreement No. 6010-23, entered into among the member lines of the Straits/New York Conference, amends Article 8 of the approved agreement to provide for the appointment of a Chairman and a temporary Chairman, and that the Chairman may appoint committees; and deletes the word "Secretary(ies)" wherever it appears in the agreement and substitutes the word "Chairman."

By Order of the Federal Maritime Commission.

Dated: October 10, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-31731 Filed 10-12-79; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 79-91]

Pan Ocean Bulk Carriers, Ltd.—Investigation of Rates on Neo-Bulk Commodities in the Trade Between the United States and South Korea; Order of Investigation

On August 22, 1979, Judge Harry Pregerson of the United States District Court for the Central District of California filed a memorandum and order, received by the Federal Maritime Commission (FMC or Commission) on September 10, 1979, in *Retla Steamship Company v. Pan Ocean Bulk Carriers, Ltd., and Pan Ocean U.S.A., Inc.*, Civil Action No. 79-1437 HP, an action for treble damages and injunctive relief brought under various sections of the Sherman Act and Clayton Act, staying that proceeding, in part, and referring action, in part, to the Commission. Retla Steamship Company (Retla), a common carrier by water in the United States/South Korea trade, had alleged that Pan Ocean Bulk Carriers, Ltd., another common carrier by water in that trade, had, together with its wholly owned subsidiary, Pan Ocean, U.S.A., Inc., which is not a carrier but acts as agent for Pan Ocean Bulk Carriers in the United States (hereinafter collectively referred to as Pan Ocean), unlawfully attempted to monopolize, conspired to monopolize, and monopolized the carriage of neo-bulk commodities (including wood and steel products) between the United States and South Korea and that Pan Ocean had conspired with shippers and with small Korean carriers to unreasonably restrain trade in that market. Included in Retla's allegations of Pan Ocean's wrongdoing were the maintenance of noncompensatory shipping rates, predatory pricing practices, threats and intimidation of shippers, stealing Retla's employees, questionable chartering arrangements, and unlawful arrangements with Korean government officials.

Judge Pregerson, adopting the position advanced by the Commission in an *amicus curiae* brief filed in the district court action, referred to the Commission the question of whether the rates charged since April, 1978 and currently charged by Pan Ocean for the carriage of neo-bulk commodities (including wood and steel products) between South Korea and the United States are so unreasonably low as to be detrimental to the commerce of the United States within the meaning of secton 18(b)(5) of the Shipping Act, 1916 (46 U.S.C. 817(b)(5)). The Court requested that the Commission undertake an investigation of this matter on its own motion rather than require Retla to institute a complaint proceeding before the Commission with respect to Pan Ocean's rates. The Court was concerned lest the prosecution of a complaint be viewed as an election by Retla to receive reparation rather than treble damages for any conduct which is shown to be unlawful. Since the Commission may award reparation only in a complaint proceeding and not in an investigation instituted on its own motion (see e.g., *Ross Products and Taub, Hummel & Schnall, Inc.*, 16 F.M.C. 333, 338-339 (1973)), the order entered as a result of this investigation will, as requested by the Court, be declaratory in nature. Lastly, the Court requested that the FMC conclude this proceeding and submit its decision to the Court not later than nine (9) months after the date the order was received by the Commission and stayed the action before it, to the extent it dealt with the rate questions referred to the agency, pending our decision here.

THEREFORE, IT IS ORDERED, That pursuant to the authority of sections 22 and 18(b)(5) of the Shipping Act, 1916 (46 U.S.C. 821 and 817(b)(5)), an investigation is hereby instituted to determine whether the rates charged by Pan Ocean Bulk Carriers, Ltd., from April, 1978 to the present time for the carriage of neo-bulk commodities (including wood and steel products) between South Korea and the United States are so unreasonably low as to be detrimental to the commerce of the United States within the meaning of section 18(b)(5) of the Shipping Act, 1916;

IT IS FURTHER ORDERED, That Pan Ocean Bulk Carriers, Ltd. is hereby made Respondent to this proceeding;

IT IS FURTHER ORDERED, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 C.F.R. 502.42), Hearing Counsel shall be a party to this proceeding;

IT IS FURTHER ORDERED, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge;

IT IS FURTHER ORDERED, That in light of the time frame requested by the Court for the conduct of this proceeding, an Initial Decision shall be issued by the Presiding Administrative Law Judge no later than February 29, 1980;

IT IS FURTHER ORDERED, That the hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examinaiton are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That during the pendency of this investigation, Respondent will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

IT IS FURTHER ORDERED, That notice of this Order be published in the

Federal Register, and a copy be served upon all parties of record;

IT IS FURTHER ORDERED, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

IT IS FURTHER ORDERED, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

IT IS FURTHER ORDERED, That except as provided in Rules 159 and 201(a) of the Commission's Rules of Practice and Procedure (46 CFR 502.159, 46 CFR 502.201(a)), all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-31730 Filed 10-12-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Aspen Bancorp, Inc.; Formation of Bank Holding Company

Aspen Bancorp, Inc., Aspen, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 83.57 per cent or more of the voting shares of The Bank of Aspen, Aspen, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 5, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 4, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-31711 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

Carroll County Financial Corp.; Formation of Bank Holding Company

Carroll County financial Corporation, Temple, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Bank of Carroll County, Temple, Georgia. The factors that are considered in acting on the application set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 5, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 4, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-31710 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

First National Lincoln Corp.; Retention of Bank Shares

First National Lincoln Corp., Lincoln, Nebraska, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to retain 6.66 percent of the voting shares, acquired in a fiduciary capacity, of McCook National Bank, McCook, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 5, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 4, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-31712 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific International Bank; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Security Pacific International Bank, New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish branches in Miami, Florida; Chicago, Illinois; and Houston, Texas. Security Pacific International Bank operates as a subsidiary of Security Pacific National Bank, Los Angeles, California.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 5, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-31709 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

National Advisory Council on Vocational Education; Hearings

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Public Hearings.

SUMMARY: This notice sets forth the schedule and purpose of the forthcoming hearings of the National Advisory Council on Vocational Education, and describes the functions of the Council. Notice of these hearings is required under the Federal Advisory Committee Act, (5 U.S. Code, Appendix I Section 10(a)(2)). This document is intended to notify the general public of its opportunity to attend.

DATES: November 8 & 9, 1979; November 27 & 28, 1979.

ADDRESSES: National Center for Research in Vocational Education, Room IC, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210; Georgia State University, 201 Urban Life Center, Decatur Street, Atlanta, Georgia 30303.

The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, P.L. 90-576. The Council is directed to:

(A) advise the President, Congress, Secretary, and Commissioner concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

On Thursday, November 8, 1979 from 9:00 a.m. to 4:00 p.m. and on Friday, November 9, 1979, from 9:00 a.m. to 12:30 p.m., the National Advisory Council on Vocational Education will hold the first of four regional hearings on the status of vocational education in correctional institutions. This hearing will be held in Room 1C of the National Center for Research in Vocational Education, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210. The second hearing will be held in Atlanta, Georgia on Tuesday, November 27, 1979, from 9:00 a.m. to 4:00 p.m. and on Wednesday, November 28, 1979, from 9:30 a.m. to 12:30 p.m. at Georgia State University, 201 Urban Life Center, Decatur Street, Atlanta, Georgia 30303.

The purpose of these hearings is to examine the adequacy of vocational education programs for youth and adult offenders, and to explore ways to improve the programs and access to them. Specifically, the hearings will address the issues of: 1) federal policy as it relates to vocational education in corrections; 2) the use of federal funds for programs and operations; 3) legislative provisions for corrections in the Vocational Education Amendments of 1976; 4) the legal, attitudinal, and procedural barriers to providing access to quality vocational programs; 5) programs and activities which have found solutions to the barriers; and, 6) recommendations for change.

Records shall be kept of all the Council hearings and shall be developed into a final report and made available to the public through the office of the National Advisory Council on Vocational Education, located at 425 13th Street, N.W., Suite 412, Washington, D.C. 20004.

Anyone interested in testifying at the hearings, and anyone seeking more information should call Ralph Bregman or Sarah Bennett at the National Council office (202) 276-8873.

Signed in Washington, D.C. on October 9, 1979.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 79-31634 Filed 10-12-79; 8:45 am]

BILLING CODE 4110-02-M

Public Health Service

Hill-Burton and Health Professions Educational Facilities Programs; "Refinancing" of Guaranteed Loans

AGENCY: Health Resources Administration, PHS.

ACTION: Notice of moratorium on approving "refinancings" of certain Federally guaranteed loans.

SUMMARY: The Health Resources Administration announces a moratorium on approving "refinancings" of loans guaranteed under Titles VI and VII of the Public Health Service Act, when those "refinancings" involve the issuance of tax-exempt bonds.

FOR FURTHER INFORMATION CONTACT: Florence B. Fiori, Ph.D., Director, Bureau of Health Facilities, Compliance, and Conversion, Health Resources Administration, Center Building, Room 6-41, 3700 East-West Highway, Hyattsville, Maryland 20782.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has requested the Department of Health, Education, and Welfare to halt approval of modifications in the terms of loans guaranteed under Titles VI (Hill-Burton) and VII (Health Professions Educational Facilities) of the Public Health Service Act, when those modifications are requested as part of transactions in which those loans are sold to public bonding authorities and used as collateral for the issuance of tax-exempt bonds. The Treasury Department has raised objections to these transactions based on national tax and fiscal policy. Accordingly, HEW is now examining its policy in regard to this use of these guaranteed loans. A number of tax-exempt "refinancings" under these authorities have already been approved by HEW's Health Resources Administration (HRA), which administers Titles VI and VII, and others are pending. The Administrator, HRA, hereby gives notice that in order to permit consideration of the above policy matters, until further notice the Department will issue no further approvals of requests for tax-exempt "refinancing" of any HEW guaranteed Title VI and VII loans which have not been accepted in the Regional Office for processing as of the date of publication of this Notice. No new applications will be accepted in the Regional Offices or in the Central Office for processing until further notice.

Dated: October 9, 1979.

Henry A. Foley, Ph. D.

Administrator.

[FR Doc. 79-31660 Filed 10-12-79; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6686-A through AA-6686-N]

Alaska Native Claims Selections

On January 3 and November 7, 1974, Nondalton Native Corporation, for the Native village of Nondalton, filed selection applications AA-6686-A through AA-6686-N, as amended, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for

the surface estate of certain lands in the Nondalton area.

On November 14, 1978, the State filed general purposes grant selection applications pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)) for certain lands in the Nondalton area. Applications AA–21444, AA–21445, AA–21446, AA–21447, AA–21579, AA–21580, AA–21581, AA–21582, AA–21583, AA–21599, AA–21600, AA–21618 and AA–21619, all as amended, selected lands in Tps. 1 N., Rs. 30, 31, 32 and 33 W.; Tps. 1 S., Rs. 30, 31, 32, 33 and 34 W.; Tps. 2 S., Rs. 31 and 33 W.; and Tps. 3 S., Rs. 32 and 33 W., Seward Meridian, respectively. Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may select *vacant, unappropriated* and *unreserved* public lands in Alaska. Since these lands were withdrawn and selected by Native village corporations, the aforementioned State Selection applications are hereby rejected in their entirety and will be closed of record when this decision becomes final. The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands.

As to the lands described below, the applications are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) aggregating approximately 108,435 acres, is considered proper for acquisition pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Seward Meridian Alaska (Unsurveyed)

T. 1 N., R. 30 W.,
Sec. 2, excluding Lake Clark;
Sec. 3, excluding Native allotments AA–991, AA–6522 Parcel B and Lake Clark;
Sec. 4, excluding Native allotments AA–6066 Parcels A and B, AA–6511 Parcel C, AA–6522 Parcel B, AA–6538 Parcel B and Lake Clark;
Sec. 5, excluding Native allotments AA–6066 Parcel B, AA–6538 Parcel B and Lake Clark;
Sec. 6, excluding Lake Clark;
Sec. 7, excluding U.S. Survey 3435, Native allotments AA–6521 Parcel B, AA–6534 Parcel B, A–052574 and Lake Clark;
Sec. 8, excluding Native allotments AA–6502 Parcel B, A–052574 and Lake Clark;
Secs. 9, 10 and 11, excluding Lake Clark;
Secs. 13 and 14, excluding Lake Clark;
Sec. 15, excluding Native allotment AA–6481;
Sec. 16, all;
Sec. 17, excluding Native allotment A–052574;
Sec. 18, exluding Native allotment AA–6534 Parcel B and Lake Clark;
Secs. 19 and 20, all;
Secs. 21 to 24, inclusive, excluding Lake Clark;
Sec. 25, all;
Secs. 26 to 30, inclusive, excluding Lake Clark;
Secs. 32 and 33, excluding Native allotment AA–6541 Parcel A and Lake Clark;
Sec. 34, excluding Native allotments AA–6484, AA–6517 Parcel B and Lake Clark;
Secs. 35 and 36, all.
Containing approximately 11,335 acres.

T. 1 S., R. 30 W.,
Sec. 5, excluding Native allotment AA–6484;
Sec. 6, excluding Native allotment AA–6525;
Sec. 7, all.
Containing approximately 1,629 acres.

T. 1 N., R. 31 W.,
Secs. 1 and 2, all;
Secs. 3 to 6, inclusive, excluding Chulitna River;
Secs. 7 and 8, all;
Sec. 9, excluding Chulitna River;
Sec. 10, excluding Lake Clark and Chulitna River;
Sec. 11, excluding Lake Clark;
Sec. 12, excluding Native allotments AA–6504, AA–6505 Parcel A, AA–6534 Parcel B and Lake Clark;
Sec. 13, excluding Native allotments AA–6505 Parcel A, AA–6534 Parcel B and Lake Clark;
Sec. 14, excluding Native allotments AA–6535 Parcel A, AA–7435 Parcel B and Lake Clark;
Sec. 15, excluding Native allotment AA–7435 Parcel B and Lake Clark;
Secs. 16, 17, and 18, all;
Sec. 22, all;
Sec. 23, excluding Native allotment AA–6535 Parcel A and Portage Bay;
Sec. 24, excluding Portage Bay;
Sec. 25, excluding Native allotment AA–6524, Portage Bay and Lake Clark;
Sec. 26, excluding Native allotments AA–814 Parcel B, AA–6524, and Portage Bay;
Secs. 27 and 32, all;
Sec. 33, excluding Native allotment AA–6511 Parcel D and Portage Bay;
Sec. 34, excluding Native allotments AA–6511 Parcel D, AA–7435 Parcel C and Portage Bay;
Sec. 35, excluding Portage Bay;
Sec. 36, excluding Lake Clark.
Containing approximately 15,473 acres.

T. 1 S., R. 31 W.,
Sec. 1, excluding Lake Clark;
Sec. 2, excluding Native allotment AA–6537 Parcel B and Lake Clark;
Sec. 3, excluding Lake Clark;
Secs. 4 and 5, excluding Portage Bay and Lake Clark;
Sec. 6, excluding Native allotments AA–6468 Parcel B, AA–6535 Parcel B and Portage Bay;
Sec. 7, excluding Portage Bay;
Sec. 8, excluding Portage Bay and Lake Clark;
Secs. 9 and 10, excluding Lake Clark;
Sec. 11, excluding Native allotment AA–814 Parcel A and Lake Clark;
Sec. 12, excluding Native allotments AA–6535 Parcel C and A–055997 Parcel B;
Sec. 13, excluding Native allotment AA–6535 Parcel C;
Sec. 14, all;
Sec. 15, excluding Lake Clark;
Sec. 16, excluding Native allotment AA–6523 Parcel B and Lake Clark;
Sec. 17, excluding Lake Clark;
Sec. 18, excluding Portage Bay and Lake Clark;
Sec. 21, excluding Native allotments AA–6505 Parcel B, AA–6523 Parcel B, AA–8271 Parcel B and Lake Clark;
Secs. 22, 23, and 27, all;
Sec. 28, excluding Native allotments AA–6505 Parcel B, AA–6536 and Lake Clark;
Sec. 29, excluding Native allotments AA–6505 Parcel B, AA–6514 Parcel B, AA–6536 and Lake Clark;
Sec. 31, excluding Native allotment AA–6523 Parcel A and Lake Clark;
Sec. 32, excluding Native allotments AA–6514 Parcel B, AA–6523 Parcel A and Lake Clark;
Secs. 33 and 34, all.
Containing approximately 9,925 acres.

T. 2 S., R. 31 W.,
Secs. 4 to 8, inclusive, all.
Containing approximately 3,144 acres.

T. 1 N., R. 32 W.,
Sec. 1, excluding Native allotments AA–6517 Parcel A, AA–7435 Parcel A and Chulitna River;
Sec. 2, all;
Sec. 3, excluding Chulitna River;
Secs. 4, 5 and 6, all;
Secs. 7 to 10, inclusive, excluding Chulitna River;
Sec. 11, all;
Sec. 12, excluding Native allotment AA–7435 Parcel A;
Secs. 13 to 17, inclusive, all;
Sec. 18, excluding Native allotment AA–6522 Parcel A;
Secs. 19 and 20, all.
Containing approximately 12,493 acres.

T. 1 S., R. 32 W.,
Sec. 1, excluding Native allotments AA–6535 Parcel B;
Secs. 2 to 5, inclusive, all;
Secs. 9 and 10, all;
Sec. 11, excluding Native allotment A–052565;
Secs. 12, 13 and 14, excluding Native allotment A–052565 and Portage Bay;
Secs. 15 and 16, all;
Sec. 21, excluding Native allotment AA–6520;
Sec. 22, excluding Native allotment AA–6520 and Lake Clark;
Sec. 27, excluding Native allotment AA–6512 Parcel B and Lake Clark;
Sec. 28, excluding Native allotments AA–6512 Parcel B, AA–6516 and Lake Clark;
Secs. 29 and 32, all;
Sec. 33, excluding Native allotment AA–6516 and Lake Clark;
Secs. 34 and 36, excluding Lake Clark.
Containing approximately 10,025 acres.

T. 2 S., R. 32 W.,
Secs. 1, 2 and 3, excluding Lake Clark;
Secs. 4 to 8, inclusive, all;
Sec. 9, excluding U.S. Survey 4876 and Sixmile Lake;
Sec. 10, excluding Native allotments AA–6510, AA–6512 Parcel A and Sixmile Lake;
Sec. 11, excluding Native allotment AA–6510;
Secs. 12, 13 and 14, all;
Sec. 15, excluding Sixmile Lake;
Sec. 16, excluding U.S. Survey 3420, U.S. Survey 3422, U.S. Survey 3876, U.S. Survey 4822, U.S. Survey 4876 and Sixmile Lake;

Sec. 17, excluding U.S. Survey 3863, U.S. Survey 3876, U.S. Survey 4876 and Sixmile Lake;
Sec. 18, all;
Sec. 19, excluding U.S. Survey 4876, Native allotment A-052569 and Sixmile Lake;
Sec. 20, excluding U.S. Survey 4876 and Sixmile Lake;
Sec. 21, excluding Sixmile Lake;
Sec. 22, all;
Secs. 23, 24, 25 and 26, excluding Native allotment AA-6513 Parcel B;
Sec. 27, all;
Secs. 28, 29 and 30, excluding Sixmile Lake;
Sec. 31, excluding Native allotment AA-8271 Parcel C, Sixmile Lake and Tazimina River;
Secs. 32 to 36, inclusive, all.
Containing approximately 18,134 acres.

T. 3 S., R. 32 W.,
Secs. 6, 7 and 18, all;
Sec. 19, excluding Newhalen River.
Containing approximately 2,484 acres.

T. 1 N., R. 33 W.,
Secs. 11 to 14, inclusive, excluding Chulitna River;
Secs. 15, 20 and 21, excluding Long Lake;
Sec. 22, excluding Native allotment A-052563 and Long Lake;
Secs. 23 to 26, inclusive, excluding Chulitna River;
Sec. 27, excluding Native allotment A-052563 and Chulitna River;
Sec. 28, excluding Native allotment A-052563 and Long Lake;
Secs. 29, 30 and 31, excluding Long Lake;
Sec. 32, all;
Secs. 33, 34 and 35, excluding Chulitna River.
Containing approximately 11,383 acres.

T. 1 S., R. 33 W.,
Secs. 5, 6 and 7, all.
Containing approximately 1,844 acres.

T. 2 S., R. 33 W.,
Sec. 36, excluding Sixmile Lake.
Containing approximately 550 acres.

T. 3 S., R. 33 W.,
Sec. 1, excluding Newhalen River;
Sec. 12, excluding Native allotment AA-7435 Parcel D and Newhalen River;
Sec. 13, excluding Newhalen River;
Sec. 14, excluding Native allotment AA-6537 Parcel D and Newhalen River;
Sec. 24, excluding Native allotment AA-6539 Parcel D and Newhalen River.
Containing approximately 2,412 acres.

T. 1 S., R. 34 W.,
Secs. 1 to 6, inclusive, excluding Chulitna River;
Secs. 7, 8 and 9, all;
Secs. 10, 11 and 12, excluding Chulitna River.
Containing approximately 7,604 acres.
Aggregating approximately 108,435 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA-6686-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

One Acre Site—The uses allowed for a one (1) acre site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

Site Easement (Airstrip)—The uses allowed for a site easement are: aircraft landing, vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 4a D1) An easement for an existing access trail twenty-five (25) feet in width from Nondalton in Sec. 30, T. 2 S., R. 32 W., Seward Meridian, northwesterly across selected lands to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 6 D9) An easement for an existing access trail twenty-five (25) feet in width from Nondalton in Sec. 30, T. 2 S., R. 32 W., Seward Meridian, around the south end of Sixmile Lake, thence northeasterly to the Pickerel Lakes and continuing easterly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 10b D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 14, T. 1 S., R. 31 W., Seward Meridian, near Flat Island on the southeast shore of Lake Clark. The uses allowed are those listed above for a one (1) acre site.

d. (EIN 10 d D9) a one (1) acre site easement upland of the ordinary high water mark in Sec. 5, T. 1 S., R. 31 W., Seward Meridian, Near Portage Bay on the northwest shore of Lake Clark. The uses allowed are those listed above for a one (1) acre site.

e. (EIN 10j E) an easement for a proposed access trail twenty-five (25) feet in width from site EIN 10b D9 in Sec. 14, T. 1 S., R. 31 W., Seward Meridian, southeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

f. (EIN 10k E) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 10d D9 in Sec. 5, T. 1 S., R. 31W., Seward Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 12b D9) a one (1) acre site easement upland of the ordinary high water mark in Sec. 11, T. 1 S., R. 34 W., Seward Meridian, on the left bank of the Chulitna River by trail EIN 4a D1. The uses allowed are those listed above for a one (1) acre site.

h. (EIN 12d D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 6, T. 1 N., R. 31 W., Seward Meridian, on the left bank of Chulitna River. The uses allowed are those listed above for a one (1) acre site.

i. (EIN 12e C5) An easement for a proposed access trail twenty-five (25) feet in width from the Chulitna River in Sec. 16, T. 1 N., R. 32 W., Seward Meridian, southerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

j. (EIN 12g C5) an easement for a proposed access trail twenty-five (25) feet in width from site EIN 12d D9 on the Chulitna River in Sec. 6, T. 1 N., R. 31 W., Seward Meridian, northerly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

k. (EIN 12h E) An easement for a proposed access trail twenty-five (25) feet in width from the Chulitna Rive in the southwesterly quarter in Sec. 15, T. 1 N., R. 31 W., Seward meridian southwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

l. (EIN 13a D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 16, T. 1 N., R. 32 W., Seward Meridian, on the right bank of Chulitna River. The uses allowed are those listed above for a one (1) acre site.

m. (EIN 16 L) A site easement for a bush airstrip two hundred and fifty (250) feet in width and one thousand five hundred (1,500) feet in length located in Sec. 18, T. 1 N., R. 30 W., and Sec. 13, T. 1 N., R. 31 W., Seward Meridian. The uses allowed are those listed above for an airstrip site.

n. (EIN 16a L) an easement for an existing access trail fifty (50) feet in width from the airstrip EIN 16 L to the mouth of the Chulitna River. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

o. (EIN 16b L) A one (1) acre site easement upland of the ordinary high water mark in Sec. 18, T. 1 N., R. 30 W., Seward Meridian, at the mouth of the Chulitna River. The uses allowed are those listed above for a one (1) acre site.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, and valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way, AA-8791, located in Secs. 30 and 31, T. 2S., R. 32 W.; Sec. 6, 7, 18 and 19, T. 3 S., R. 32 W.; Sec. 36, T. 2 S., R. 33 W.; and Sec. 1, T. 3 S., R. 33 W., Seward Meridian, varying in width from thirty (30) feet to one hundred fifty (150) feet each side of the centerline, for a Federal Aid Secondary Highway, issued to the State of Alaska, Department of Highways (now the Department of Transportation and Public Facilities) under the provisions of the act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317 (1976)); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Nondalton Native Corportation is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 108, 435 acres of this entitlement have been approved for conveyance; the remaining entiltement of approximately 6,765 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, Conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Nondalton Native Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

Only the following inland water bodies, within the described lands, are considered to be navigable:

Newhalen River;	Sixmile Lake;
Lake Clark;	Chulitna River;
Portage Bay;	Tazimina River;
Long Lake.	

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until 11-14-79 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served are:

Nondalton Native Corporation, Nondalton, Alaska 99640.

Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576.

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorge, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-31721 Filed 10-12-79; 8.45 am]

BILLING CODE 4310-84-M

Intent To Prepare a Grazing Environmental Impact Statement for the Paradise-Denio Resource Area, Nev.

The Bureau of Land Management, Winnemucca District Office, will be preparing a Grazing Environmental Impact statement for the Paradise-Denio Resource Area, located in north-western Nevada. The Bureau's proposed action to be analyzed in the statement is to implement a program of allocating vegegation to cattle, sheep, domestic horses, wild horses and burros, mule deer, antelope and bighorn sheep. The action will also identify kinds of livestock, livestock numbers, periods of use, and range improvement projects (e.g., fencing, water development). This allocation program will be accomplished through the Bureau of Land Management's Planning System on approximately 3.8 million acres of BLM-administered lands.

Alternative to the proposed action that will be analyzed included: (1) No Action—This is defined as the existing range management program in the Paradise-Denio Resource Area; (2) No Livestock Grazing—This is the exclusion of all domestic livestock grazing from BLM administered public lands in the Paradise-Denio Resource Area; (3) Maximizing Livestock Use Through Management and Development—This is the maximum development of range improvements wherever they are technically feasible; (4) Maximizing Wild Horses and Burros in Herd Use Areas on Public Lands—This is the allocation of vegetation for the maximum numbers of wild horses and burros in each herd use area; (5) Reduction of Livestock Grazing to a Level That is 40-50% Below the Proposed Action—This is an arbitrary reduction in use unit-wide to the range of 40-50% below that of the proposed action; (6) Elimination or Adjustment of Allotment Boundaries and Equal Grazing Reductions for All Users—This alternative is defined as one in which all allotment boundaries would be eliminated or adjusted and new areas of use assigned.

The Bureau of Land Management's scoping process for the Paradise-Denio Environmental Impact Statement will include: (1) An identification of issues to be addressed; (2) Contact of interested

individuals, groups and agencies for additional information concerning these issues; and (3) An identification of persons within the agency who can answer questions about the proposed action and alternatives.

The following steps will be utilized to accomplish the scoping process:

1. A formal meeting will be held between the Bureau of Land Management and the Nevada State Clearinghouse. The meeting will be held between August 6–10, 1979, at the BLM Carson City District Office, 1050 East Williams Street, Suite 335 in Carson City, Nevada, at 0900 a.m. This meeting will be a briefing of State Agencies concerning their input on the issues of the EIS.

A formal meeting will also be held with the Humboldt County Commission on November 15th at the Commission's office in the Humboldt County Courthouse. This meeting will brief the Commissioners concerning the proposed action and alternatives, and get their input on the issues of the EIS.

2. Letters of invitation will be mailed to all affected Federal, State and local agencies, any affected Indian tribes and other interested persons concerning the issues of the Environmental Impact statement. Briefing meetings will be held if requested.

The following individuals will be available by appointment between November 19 and November 23, 1979 to answer questions about the proposed action or to receive information concerning the Environmental Impact Statement: (1) Chester Conard, District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, Phone 623–3676; (2) William Harkenrider, Paradise-Denio Resource Area Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, Phone 623–3676; (3) Robert Neary, Planning and Environmental Coordination Staff, 705 East Fourth Street, Winnemucca, Nevada 89445, Phone 623–3676; (4) Mike Walker, Environmental Coordinator, Room 3008 Federal Building, 300 Booth Street, Reno, Nevada 89509, Phone 784–5602.

A news release regarding the start of the environmental statement process will be issued by the Winnemucca District following the publication of this notice.

Written comments will be accepted until December 5, 1979. They should be sent to Chester Conard, District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445.

Dated: September 13, 1979.

Chester E. Conard,

Acting State Director, Nevada.

[FR Doc. 79-29123 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-84-M

BLM To Release 420,000 Public Land Acres From Wilderness Inventory

The Bureau of Land Management in Nevada has decided to release about 420,000 acres of public lands in Eureka, Nevada and White Pine Counties, Nevada from further wilderness consideration because the areas lack wilderness characteristics.

The decision, which will be implemented Nov. 3 unless a public protest is received, follows a 90-day public comment period on a special, accelerated inventory announced Aug. 3, 1979. The following comments were received and analyzed: Ruby Valley Unit (NV–40–023), two comments noting roads and other intrusions, two stating the area deserves further study; Big Bald (NV–040–024), nine comments noting roads, intrusions, or other resource values and two stating the area deserves further study; Buck Pass (NV–040–035), three comments noting roads, intrusions, or other resource values and two stating the area deserves further study; Alligator Ridge (NV–040–036), two comments noting roads and other resource values, two stating the area deserves further study; Yelland Acres (NV–040–037) four comments noting roads and man-made intrusions, two stating the area deserves further study; Black Point (NV–040–141), seven comments noting roads or intrusions, two stating the area deserves further study; and Bull Creek (NV–040–147), four comments noting roads and intrusions and two stating the area deserves further study.

After field-checking comments where possible and carefully considering all aspects of the public comments received, the Bureau has decided that the seven units involved all lack wilderness characteristics, primarily naturalness and opportunities for solitude and primitive and unconfined types of recreation.

The special inventory was requested by two mining operators who desire to begin open pit mining operations within the units to extract gold and barite.

Further information on the special inventory or the Bureau's decision is available from the Nevada State Office, BLM, 300 Booth Street, Room 3008, Federal Building, Reno, NV 89509; or the Ely District Office, Star Route 5, Box 1, Ely, NV 89301.

Dated: October 3, 1979.

Roger J. McCormack,

Acting State Director, Nevada.

[FR Doc. 79-31654 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-84-M

[N-20616; N-20620 A&B]

Nevada; Realty Action—Non-Competitive Sale Public Lands in Nye County, Nev.

October 2, 1979.

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Mount Diablo Meridian

T. 2 N., R 42 E.,
Sec. 1, NE¼SW¼, NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼;
Sec. 2, Lots 20 and 23; containing 124.89 acres.

The land in Section 1 and Lot 20 of Section 2, comprising 110.13 acres, is being offered as a direct sale to Nye County, Nevada, at the appraised fair market value.

The sale of this land to Nye County will allow for orderly growth of the town of Tonopah. The county will make a portion of the land in Section 1 located near U.S. Highway 95 available for residences and businesses and will devote the balance of the land to recreational facilities. A city street occupies all of Lot 20. Sale of this lot to Nye County will resolve a long-standing management problem.

Lot 23 in Section 2, comprising 14.76 acres, is being offered as a direct sale to the Nye County School District at the appraised fair market value. The sale of Lot 23, which adjoins and surrounds the Tonopah Public School site on three sides, will allow for future school expansion and accommodate development which already has encroached on this lot.

This sale is consistent with the Bureau's planning system and has been discussed with the Nye County Commissioners and with representatives of the Nye County School District. The public interest would be served by offering these lands for direct sale to Nye County and to the Nye County School District. The land will not be offered for sale until 60 days after the date of this notice.

The following conditions will be applicable to the sale:

1. The mineral rights will be reserved to the United States.

2. An easement will be reserved for right-of-way, 60 feet in width, along the

north boundary of the NE¼SE¼, the N½NW¼SE¼ and the NE¼SW¼ in Section 1 to assure public access to adjacent land.

3. An easement, 45 feet in width, for the existing road which crosses Lot 23 of Section 2 will be reserved to Nye County for public use.

4. An easement will be reserved for the water pipeline which crosses Lot 23 of Section 2.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of the public discussions, is available for review at the Bureau of Land Management Office, Tonopah Resource Area, Bldg. 102, Military Circle, Tonopah, Nevada 89049.

For a period of 30 days from the date of this notice, interested parties may submit comments to the Secretary of the Interior, Bureau of Land Management 320, Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this Notice of Realty Action will become the final determination of the Department of the Interior.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 79-31656 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38403 and 38404]

New Mexico; Applications

October 3, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 28 E.,
Sec. 23, SW¼NE¼ and W½SE¼;
Sec. 26, W½NE¼, SE¼NW¼ and NE¼SW¼.
T. 21 S., R. 29 E.,
Sec. 8, S½N½.

These pipelines will convey natural gas across 1.988 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Bill J. Warner,

Acting Chief, Division of Technical Services.

[FR Doc. 79-31655 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf Advisory Board, North Atlantic Technical Working Group Committee; Meeting

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Name: North Atlantic Technical Working Group Committee.
Date: November 8, 1979.
Place: The Garden Room at the Biltmore Plaza Hotel, Providence, Rhode Island.
Time: 9:00 a.m. to 5:00 p.m.

Committee membership consists of representatives from federal agencies, the coastal States from Maine through New Jersey, the petroleum industry, and other private interests.

Agenda: Committee organization and responsibilities, meeting procedures, members' involvement in OCS oil and gas activities, and the Regional Studies Plan for the North and Mid-Atlantic Regions.

The meeting will be open to the public. Public attendance may be limited by the space available. Persons wishing to make oral presentations to the Committee should contact Dick Wildermann of the New York OCS Office (212-264-2960) by November 1. Written statements should be submitted by November 15 to the New York OCS Office, Bureau of Land Management, 26 Federal Plaza, Suite 32-120, New York, New York 10007.

Minutes of the meeting will be available for public inspection and copying by January 4, 1980 at the above address.

Frank Basile,

Manager, New York OCS Office.

October 9, 1979.

[FR Doc. 79-31658 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Outer Continental Shelf Advisory Board Policy Committee, North Atlantic Region; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A-63, Revised. (See other OCS Advisory Board meeting in this issue under Land Management, Bureau.)

The North Atlantic Regional OCS Policy Committee will meet on November 7, 1979, from 10:00 a.m. to 3:30 p.m. in the Governor's Energy Office Conference Room, 80 Dean Street, Providence, Rhode Island.

The meeting will cover the following principal subjects:

(1) Lease Sale #42
(a) Summary
(b) Interagency agreement
(2) Atlantic OCS Geologic Structures
(3) Coastal Management Programs and Consistency
(4) Canadian OCS Leasing, Drilling and Regulatory Policies and Procedures

The meeting is open to the public. Interested persons may make oral or written presentations to the Committee. Such requests should be made by October 29, 1979, to the Chairman: Charles Colgan, State Planning Office, 184 State Street, Agusta, Maine 04333, (207/289-3261).

The States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York serve on the Regional Committee.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Office of OCS Program Coordination, Room 5150, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240.

Dated: October 9, 1979.

Alan D. Powers,

Director, Office of OCS Program Coordination.

[FR Doc. 79-31659 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-10-M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 9:30 a.m. CST on November 19, 1979, in the Holiday Inn, 100 West Bank Expressway, Gretna, Louisiana.

The Delta Region Preservation Commission was established pursuant to Public Law 95-265, Section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, in the development and implementation of a general management plan, and in the development and implementation of a comprehensive interpretive program of

the natural, historic, and cultural resources of the Region.

The members of the Delta Region Preservation Commission are:

Mr. Charles J. Eagen, Jr., New Orleans, Louisiana
Mr. Robert B. Evans, Jr., Gretna, Louisiana
Mrs. William R. (Linda) Adams, New Orleans, Louisiana
Mr. Frederick W. Wagner, New Orleans, Louisiana
Mr. Barry Kohl, New Orleans, Louisiana
Mrs. Diane Ribando, Marerro, Louisiana
Mr. Sidney Rosenthal, Jr., Jefferson, Louisiana
Mr. LeRoy E. Demarest, Harahan, Louisiana
Mr. D. David Duplantis, Marerro, Louisiana

The matters to be discussed at this meeting include:

1. Management objectives for the National Park.

2. Commission purpose and organization.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, 400 Royal Street, Room 200, New Orleans, Louisiana, 70130, telephone Area Code 504 589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: October 4, 1979.

Robert I. Kerr,

Acting Regional Director, Southwest Region, National Park Service.

[FR Doc. 79-31735 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of Section 9.17 of 36 CFR Part 9, Milton C. Jauhola has filed plans of operations in support of proposed mining activities on lands embracing his Mining Claims within the Denali National Monument. These plans are available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: September 6, 1979.

Robert L. Peterson,

Acting Director, Alaska Area Office.

[FR Doc. 79-31736 Filed 10-12-79; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Request for Comments on the LEAA Draft Guideline: Alternative Education

AGENCY: Law Enforcement Assistance Administration (LEAA).

ACTION: Request for Public Comment.

SUMMARY: This draft guideline is a proposed addition to M 4500.1G, Guide for Discretionary Grant Programs, and as such will be subject to the same regulations which govern that manual. It will not in any way impact upon the programs or regulations presently set out in M 4500.1G, nor will it affect the eligibility of those individuals applying for previously announced programs.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), Law Enforcement Assistance Administration (LEAA), pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is inviting interested comments on the proposed guideline, Alternative Education: Prevention of Juvenile Delinquency, and will consider such comments before the final publication of this guideline. The period for public comment on this draft guideline is 60 days. All comments must be received on or before December 14, 1979.

After publication of the final guideline, which is expected to be published in the Federal Register in early Winter 1980, it is anticipated that applicants will have 60–90 days to develop applications. This will permit award of funds in early Summer 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Monserrate Diaz at 202–724–7755, Office of Juvenile Justice and Delinquency Prevention Law Enforcement Assistance Administration, 633 Indiana Avenue NW., Washington, DC 20531.

Henry S. Dogin,

Administrator Law Enforcement Assistance Administration.

Chapter 6. Juvenile Justice and Delinquency Prevention

62. Alternative Education

a. *Program Objectives.* Pursuant to Section 224 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is sponsoring a major program to prevent juvenile delinquency through the development and implementation of programs designed to keep students in schools, to prevent unwarranted and arbitrary suspensions and expulsions, dropouts, pushouts and truancy. The specific objectives are:

(1) To stimulate and modify educational policies, practices and procedures which negatively impact opportunities for students to achieve academic and social success through alternative education options in schools and school districts.

(2) to upgrade the quality of existing alternative education programs by improving curriculum development, staff training, youth and parent participation, and administrative policies and practices of schools and school districts.

(3) To reduce the number of student dropouts, suspensions and expulsions in schools and school districts where these programs operate.

b. *Program Description.* (1) *Background.* The Office of Juvenile Justice and Delinquency Prevention, in carrying out its overall mandate to prevent delinquency, has the responsibility for facilitating and stimulating changes in those institutions which have the greatest impact upon the maturation and socialization of youth. Following the family, the school is the major socializing institution in the experience of young people, and positive and supportive experiences in schools are critical to the development of constructive social behavior patterns. Conversely, a significant number of youth involved in delinquency reflect a history of negative school experiences.

(2) *Problem Addressed.* (a) Educators and non-educators alike continue to be critical of present day education programs which fail to meet the social, emotional, academic and vocational needs of all students. The failure to provide adequate support in these areas leads to high rates of suspensions, truancy, dropouts, disruptive classroom behaviors, violence, vandalism, alienation and general student disinterest in learning. A study by the National Parent Teachers Association for the 1974–75 school year indicated that each day some 2½ million students were not present in school. Some school systems report absenteeism rates of 30% or higher.

(b) Recent statistics reveal that over 26% of the nation's fourteen-year-old boys and 18% of the fourteen-year-old girls were in grades lower than the national modal level of first year in high

school. Further, according to the U.S. Commissioner of Education, 25% of the high school students in the U.S. leave school before they graduate.

(c) In its 1977 report the National Institute of Education (NIE) estimated the cost of school vandalism to be more than $200M per year. The NIE reports that although only 25% of a student's waking hours are spent in school, 40% of the robberies and 36% of the assaults on urban students occurred in schools. The risks are especially high for youths aged 12 to 15—a remarkable 68% of the robberies and 50% of the assaults against youngsters of this age occurred at school.

(3) *Program Target.* The program targets are school and school districts with youth in grades 6 through 12 serving communities characterized by high rates of crime, delinquency suspensions, expulsions, dropouts and absenteeism.

(4) *Results Sought.* (a) A reduction in the number of delinquent acts committed in and around schools.

(b) A reduction in student dropouts, suspension, expulsions and truancy.

(c) An increase in the daily attendance rate of schools and school districts impacted by this program.

(d) An increase in the number of students experiencing academic success and graduating from school.

(e) Adoption and implementation of school policies, procedures and practices which:

1. Limit referrals by schools to the juvenile justice system;

2. Provide for due process, fairness and consistency in disciplinary actions;

3. Reduce student alienation and the sense of powerlessness through increased youth, parent and community agency participation in school decision-making processes; and

4. Prevent grouping (according to non-academic criteria) and racial segregation of students while enhancing the overall learning environment.

(f) Development and implementation of alternative educational options which increase the opportunity for cognitive and practical learning and the integration of these options into the regular school curriculum and program.

(5) *Working Assumptions.* (a) Delinquent behavior evolves from social environments which limit positive youth development in the areas of social competence, a sense of belonging and usefulness.

(b) School experiences can be altered to minimize the school's contribution to delinquency by changing the structure and the educational process of schools.

(c) The availability of alternative educational opportunities is a viable means of enabling students to experience academic success, improve the quality of interaction between adults and youths, and strengthen student commitment to schools.

(d) Students who have little stake in achievement in school and conformity to the rules of conventional schools often become alienated and are more likely to engage in delinquent activities.

c. *Program Strategy.* Applications are invited for action projects which impact the school climate, organizational structure and educational process. It is expected that the development and demonstration of more effective alternative educational options will ultimately be adopted by existing school systems. Projects are to reflect the following characteristics:

(1) Schools must provide youths the opportunity to receive an educational experience which is relevant to their interests and meets the need for cognitive and affective learning skills which contribute to positive growth and development. The options must be open to students on a volunteer basis from grades 6 through 12 and allow continuous contact between the problem student and the regular student. This will assist in the prevention of labeling, stigmatization, tracking and racial segregation of students and enhance the overall learning environment.

(2) Specific goals and objectives must have primary impact upon policies, procedures and practices of schools and school districts.

(3) Project models must incorporate the following key elements:

(a) Individualized instruction in which curricula are tailored to student's cognitive and affective learning needs and interests.

(b) The establishment of a clear system of support and rewards for individual improvement. Both differential reenforcement for different amounts of personal progress and range of reward options beyond traditional grades are important.

(c) The formation of coalitions between school leadership, policy bodies (such as school boards), community organizations, business, labor, parents and youth to improve the educational environment.

(d) A comprehensive approach for the improvement of schools and school districts in coordination with community groups, organizations, juvenile justice system, parents, youth and concerned citizens.

(e) Utilization of peer group experience in every aspect of the learning situation.

(f) Training of existing school personnel aimed at changing how they perceive and relate to troubled and "nonconforming" youth in the daily routine of the regular school environment.

(g) Small program size with a low student/adult ratio.

(h) A strong, consistent and supportive administrator committed to ensuring that each student realizes his/her potential while establishing and maintaining a climate of respect for students with fair and consistent discipline.

d. *Application Requirements.* These requirements are to be used in lieu of Part IV—Program Narrative Instructions in the standard Federal Assistance Form 424. In order to be considered for funding, applications must include the following information in the order outlined in this guideline:

(1) *Project Goals and Objectives.* Outline project goals and objectives in measurable terms with respect to improvement of the policies, practices, procedures, leadership, structure and school climate. This should include the projected reduction of dropouts, truancy, suspensions and expulsions, and increase in academic performance levels relating them to results sought. (Paragraph b(4)(a)–(f).) These projections are to be based upon the most recent data available.

(2) *Problem Definition and Data Needs.* (a) A socio-economic profile of the community served by the school or school district with such demographic data as are necessary to document crime rates, racial/ethnic population, school enrollment and the actual level of truancy, dropouts, suspensions and expulsions for 1977, 1978 and 1979 school years.

(b) A description of the applicant school and the local school system, inclusive of school policies and procedures regarding suspensions, expulsions, absenteeism and discipline for disruptive behavior.

(c) The number and kind of agencies, schools, or institutions providing alternative education to youth in the target community, including a description of the available programs.

(d) A description of the relationship of community agencies, schools and institutions to the proposed project.

(e) A description of the manner in which present school policies, practices and procedures impede or facilitate the ability of school personnel to provide a healthy educational environment.

(f) A description of how the project will impact these problems which impede the ability of students to succeed and indicate how the administration expects to achieve the goals of the project.

(3) *Program Methodology.* Based on the information provided in program strategy, Paragraph c(1)–(3) of this guideline, develop a project design which provides a clear description of the following:

(a) Describe the strategies to be employed and the activities to be used to effect change or to ameliorate the problems in the school system.

(b) Describe the Alternative Education model that will be used and indicate why it is best suited to meet the needs of youth in the target community. Indicate how it is expected to create situations that expand access to desirable opportunities. (For additional information regarding different models, refer to Appendix 1 in the guideline.)

(c) A sample of the curriculum which would be representative of the total school community.

(d) The methods of maximizing the participation of youth, parents and citizens of the community in the planning, implementation and evaluation of the project and in school decision-making procedures.

(e) The techniques to be used to build staff capacities consistent with the characteristics defined for the target of this program. Include descriptions of the types and amounts of training and technical assistance that will be available. Develop criteria and procedures for selecting the staff.

(f) The required organizational structure and personnel to support the proposed program. This should be presented in detail, specifying the tasks for each key position.

(g) The educational and public relations activities that are required to gain and maintain public understanding and support for the program.

(h) Criteria and procedures for selecting those youth who will participate in the program, and methods which assure that an appropriate mix of students will participate in the program.

(i) The methods of protecting the legal rights of youth served and confidentiality of records, and the methods that will be used to avoid negative labeling.

(4) *Workplan.* Prepare a detailed work schedule which outlines specific program objectives in relation to milestones, activities and time frames for accomplishing the objectives. The workplan and budget should be prepared to allow for a two-month start-up period.

(5) *Budget.* Prepare a budget of the total costs to be incurred in carrying out the proposed project over three years with a detailed breakdown and narrative for the first two budget years. Include in the budget funds for travel for three (3) staff persons (at least one must be a youth participating in the program) to attend four (4) technical assistance and training sessions for the first grant period (two years) for an average of three (3) days per trip. For the purpose of budget preparation, assume that these sessions will be held in Midwest, USA. Budget up to 15 percent of the total projected outlays to cover the costs of a management information system. No match will be required for these grants. Travel budgeted for coordination with other alternative education projects must be confined to not more than two (2) trips over the two (2) year project period.

(6) *Management Information System.* Each application must include a proposed management information system. This system will address the following objectives:

(a) To provide consistent and complete information on the numbers and types of youth served in the program.

(b) To provide consistent and complete information on youth responses to the types of services/activities provided.

(c) To determine the impact of the project on school achievement, and development of social and academic skills.

(d) To determine what types of services appear to be most effective for what types of youth and under what conditions

e. *Dollar Range and Duration of Grants.* The grant period for this program is three years, with awards made in increments of 24 months and 12 months. Third-year continuation awards are contingent upon satisfactory grantee performance in achieving stated objecives in the two previous years, availability of funds and compliance with the terms and conditions of the grants. Grants will range up to $250,000 for each project year with the size of each grant based upon the extent of the problems to be addressed and the realistic improvement expected to result in schools, number of juveniles served, the cost-effectiveness of the project design, and the jurisdiction's capacity to absorb the program after this funding terminates. Funds for this program are allocated under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977, and require no match. Grants may be terminated at any point for failure to meet program process objectives and grant requirements.

f. *Eligibility to Receive Grants.* (1) *Applicant Eligibility.* Applications are invited from public and private not-for-profit schools, agencies or organizations who propose to serve disadvantaged youth from rural and urban areas with high levels of serious school related problems. private not-for-profit school, agencies or organizations who apply must operate in coordination or have linkages with the local public school system in order to promote utilization of effective program models and future funding support. Public school systems who apply must demonstrate the involvement and coordination with the private not-for-profit organizations, community groups, juvenile justice system, parents and youth.

(2) *Applicant Capability.* The applicant must:

(a) Demonstrate knowledge of and experience in the field of innovative and experimental education.

(b) Have the demonstrated capability and experience to develop and manage fiscal systems necessary for the administration of Federal funds.

(c) Have available experienced administrative and professional staff who demonstrate a commitment to effective alternative educational opportunities.

(d) Provide letters of support from public and private sector agencies and organizations regarding opportunities offered to youth.

g. *Submission Requirements.* (1) *Submission Procedures.* The Alternative Education initiative has been determined to be of national impact and awards will be made directly to the successful applicants. Applications must be submitted to the Office of Juvenile Justice and Delinquency Prevention, LEAA, in accordance with the form outlined in Appendix 2, Guide for Discretionary Grant Programs, 4500.1G, September 30, 1978. Refer to Appendix 5, Parts II and IV, for instructions on how to prepare the budget, budget narrative and program narrative. Applicants must consult and coordinate the applications with the relevant state planning agencies as provided by M 4500.1G, Appendix 2, Section 2. Prior to submission of applications to the Office of Juvenile Justice and Delinquency Prevention, applicants must also submit applications to appropriate A–95 Clearinghouses in accordance with A–95 requirements. Letters of verification indicating appropriate contacts with state planning agencies and A–95 Clearinghouses must be included in the applications. Addresses are included in Appendices 1 and 2.

(2) *Deadline for Submission of Applications.* One (1) original and two (2) copies of the application must be mailed or hand delivered to the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633

Indiana Avenue, N.W., Washington, DC, 20531, on or before
Applications sent by mail will be considered to be received on time if sent by registered or certified mail no later than , as evidenced by the U.S. Postal Service postmark on the original receipt of the U.S. Postal Service.

h. *Evaluation Requirements.* The projects funded under this program will be evaluated by an independent evaluator selected by the Office of Juvenile Justice and Delinquency Prevention. In addition to the requirements set forth in paragraph d(6), applicants must identify information unique to their particular proposed approach to enable the national evaluator to develop a national management information system which would provide uniform information on projects of similar scope and design. The national evaluator will provide training and technical assistance in implementing the management information system. The major goals of the evaluation are to:

(1) Determine the impact of the program on dropouts, suspensions, expulsions, truancy and delinquency;

(2) Determine the extent to which policies, practices and procedures of schools and school districts are modified;

(3) Determine the impact of the program on youth and parent participation and vice versa; and

(4) Document the planning and implementation processes of different program approaches to alternative education.

All applicants must include assurances in their application agreeing to fully cooperate with the national evaluators in terms of the management information system and the requirement of the overall evaluation component.

i. *Technical Assistance.* Ongoing technical assistance in program implementation will be provided by OJJDP to the funded projects.

j. *Criteria for Selection of Projects.* Applications will be rated and selected using the following criteria. Only those applications meeting the criteria at the highest level will be considered for grant award. Other factors being equal, in making final selections, OJJDP will give consideration to geographic distribution of projects and cost-effectiveness.

(1) The extent to which the applicants meet the eligibility and capability requirements outlined in Paragraph f(1)–(2). (15 points)

(2) The extent to which the proposed project addresses the characteristics of the target schools and neighborhoods as described in b(3). (5 points)

(3) The extent to which the activities, opportunities and methods build upon the cultural background, language experience and neighborhood of the school population shows that:

(a) Student participants represent an appropriate population mix; (5 points)

(b) Selection criteria to choose participants are well defined; and (5 points)

(c) Participation is on a voluntary basis. (3 points) (Total: 13 points)

(4) The extent to which the applicant shows that the project has an adequate budget and is cost effective by:

(a) An effective plan of financial management; (3 points)

(b) Number of youth served and project design; and (3 points)

(c) An itemized statement of cost that justifies each line item in the proposed budget and indicates that costs are reasonable in relation to the objectives of the project. (4 points) (Total: 10 points)

(5) The extent to which the project design provides:

(a) A model in accordance with the program goals, objectives and strategies as outlined in the guideline, and the applicant's capability and commitment to achieve them; (10 points)

(b) High quality in the overall design for the project as outlined in c(3); (10 points)

(c) An effective plan of management for the project; (3 points)

(d) An effective plan for training of staff members in needed skills areas; and (5 points)

(e) The way the applicant plans to use its resources and staff to achieve each objective. (4 points) (Total: 32 points)

(6) The extent to which the applicant demonstrates:

(a) Strategies to institute change in the educational system; (7 points)

(b) An understanding of the problems associated with effective change; and (6 points)

(c) The capability to coordinate with or to coordinate other resources in order to implement a comprehensive plan to institute change. Evidence of capability must include letters of commitment from other agencies, documentation that planning the proposed project actively has involved other agencies, parents and youth, and evidence of sharing staff and facilities. (12 points) (Total: 25 points)

k. *Definitions.* (1) *Alternative Education*—provides increased opportunities for students, and utilizes a range of educational options which should include individualized instruction (emphasizing the development of cognitive skills), a system of rewards for individual performance, a goal-oriented work and learning emphasis in the classroom, and a combination of structural/human characteristics which facilitates academic success because of their more intensive involvement of the student than is normally demonstrated in conventional school settings.

(2) *Dropout*—a student who quits school. Usually a student dropout is beyond the compulsory school attendance age of 16.

(3) *Expulsion*—the termination of a student's right to attend school. Such a decision usually requires school board action.

(4) *High Risk Communities*—communities where youth live that are characterized by high rates of crime and delinquency, high infant mortality rates, high unemployment and underemployment, sub-standard housing, physical deterioration of neighborhoods and low incomes.

(5) *Program*—refers to the National Alternative Education Initiative to establish programs supported by OJJDP and the overall activities related to implementing the Alternative Education Program.

(6) *Project*—refers to the specific set of Alternative Education activities at a given site(s) designed to achieve the overall goal of reducing student dropouts, pushouts, suspensions, expulsions and truancy.

(7) *Pushout*—is when a student decides to leave school because of frustration from not achieving success or of pressure exerted by the school through various disciplinary actions.

(8) *Structured*—refers to a classroom setting that is well-organized, has explicit directions, well defined goals and objectives, specific standards for student behavior, flexibility in terms of individual differences, and provides the opportunity for students to experience success.

(9) *Suspension*—the exclusion of a student from school for a specified period of time, usually from one to ten days.

(10) *Unstructured*—refers to a classroom setting that allows students excessive freedom and permissiveness and is loosely run. Directions are usually unclear and in most instances students are not goal oriented.

(11) *Small Program Size*—for the purposes of this Guideline is defined as a class with no more than 15 students.

(12) *School Systems*—includes public school systems, private not-for-profit school systems or a combination of both; also includes variations of the above as part of public or private school systems or institutions (e.g., vocational schools, special education schools,

including educational programs in juvenile correctional facilities, and alternative education programs).

(13) *Delinquency*—is the behavior of a juvenile in violation of a statute or ordinance in a jurisdiction which would constitute a crime if committed by an adult.

(14) *Truancy*—is when the student is absent from school without permission.

[FR Doc. 79-31728 Filed 10-12-79; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Changed Meeting

October 9, 1979.

This is to announce a change in the date of the Humanities Panel announced in the Federal Register on September 6, 1979, Vol. 44, No. 174, Page 52057, Item #1. The meeting to review NEH Practitioners Seminar applications will be held on October 23, 1979 instead of September 20, 1979.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 79-31752 Filed 10-12-79; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel Changed Meeting

October 9, 1979.

This is to announce a change in the date of the Humanities Panel announced in the Federal Register on October 4, 1979, vol. 44, page 57243, #194. The meeting to review applications in State and Local History will be held on November 2, 1979 only instead of on November 1 and 2, 1979.

Stephen McCleary,

Advisory Committee Management Officer.

[FR Doc. 79-31753 Filed 10-12-79; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on the Three Mile Island Nuclear Powerplant; Meeting

The ACRS Subcommittee on the Three Mile Island Nuclear Power Plant will hold a meeting on October 30, 1979 in Room 1046, 1717 H St. NW, Washington, DC 20555 to review the NRC Inspection and Enforcement Report, "Investigation into the March 28, 1979, Three Mile Island Accident by Office of Inspection and Enforcement," Investigative Report No. 50-320/79-10 (NUREG-0600). Notice of this meeting was published September 20, 1979 (44 FR 54559).

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Tuesday, October 30, 1979
8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendation to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Metropolitan Edison Company, and their consultants, and other interested persons, regarding this review.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Ragnwald Muller (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be discussed at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, PA 17126.

Dated: October 5, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-31508 Filed 10-12-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 10, 1979.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirments that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and

questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

Extensions

Agricultural Stabilization and Conservation Service
CMS Purchase Order—Rural Environmental Conservation
RE–250
On Occasion
Vendors and Farmers, 500,000 responses; 125,000 hours
Charles A. Ellett, 395–5080

Reinstatements

Agricultural Marketing Service
Regulations Under the Packers and Stockyards Act
On Occasion
Meat Packers, Market Agencies & Dealers (Livestock) 32,091 responses; 18,913 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

New Forms

Bureau of the Census
Census Forms–1980 Census of Puerto Rico
D–IPR, 2PR, & 13PR
Single time
All Households in Puerto Rico 1,000,000 responses; 500,000 hours
Off. of Federal Statistical Policy & Standard, 673–7974

Revisions

Bureau of the Census
*Production of Industrial Gases
M–28C
Monthly
Manufacturers of Industrial Gases 8,400 responses; 2,800 hours
Off. of Federal Statistical Policy & Standard, 673–7974
Bureau of the Census
*Animal and Vegetable Fats and Oils (Warehouse Stocks)
M–20H
Monthly
Warehouses 1,800 responses; 900 hours
Off. Of Federal Statistical Policy & Standard, 673–7974
Bureau of the Census
Industrial Gases (Shipments and Production)
MA–28C
Annually
Manufacturers of Industrial Gases 700 responses; 700 hours
Off. of Federal Statistical Policy & Standard, 673–7974
Industry and Trade Administration
Application for License to Enter Watches and Watch
Move—into the Customs Territory of the U.S.
(P.L. 89–805)
ITA–334P
Annually
Firms Interested in Duty-Free Watch Quota 16 responses; 48 hours
Richard Sheppard, 395–3211
Maritime Administration
Application for Capital Construction Fund and Exhibits
Other (See SF–83)
Shipowners/Operators 315 responses; 4,820 hours
Richard Sheppard, 395–3211

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697–1195

New Forms

Departmental and Other
Justification Statement for Commitants of Attrition
Study
Single time
NPS Reservists in Selected Companies 500 responses; 200 hours
Richard Sheppard, 395–3211

DEPARTMENT OF ENERGY

Agency Clearance Officer—John Gross—633–8558

New Forms

Grant Management Activities Report
CS–199
Quarterly
State Energy Offices 220 responses; 1,760 hours
Budget Review Division, 395–4775
Distillate Fuel Oil Supply Emergency Telephone Survey
EIA–428
Single time
Distributors of Fuel Oil to Farmers 274 responses; 69 hours
Jefferson B. Hill, 395–5867

Revisions

Survey of Fuel Oil Dealers—Retail/Wholesale
EIA–1156, 1157, 1158, & 1159
Monthly
Retail/Wholesale Fuel Oil Dealers 60,000 responses; 26,640 hours
Off. of Federal Statistical Policy & Standard, 673–7974
*Survey of Fuel Oil Dealers/Bulk Operators
EIA–E–M1160, 1161
Monthly
Fuel Oil Dealers/Bulk Operators 24,000 responses; 10,656 hours
Off. of Federal Statistical Policy & Standard, 673–7974

Reinstatements

Typical Net Monthly Bills for Electric Service
EIA–213
Annually
Utilities (Elec.) 1,250 responses; 10,875 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—William Riley—245–7488

New Forms

Alcohol, Drug Abuse and Mental Health Administration
Implications of Psychiatric Diagnosis for Narcotic Treatment; Psychotherapy of Opiate Dependent Individuals
Other (See SF–83)
Heroin Abusers in and Out of Treatment 1,347 responses; 3,703 hours
Richard Eisinger, 395–3214
Office of Human Development
Zoning Survey Questionnaire
Single time
Zoning Officials in Approx. 100 Cities 100 responses; 100 hours
Barbara F. Young, 395–6132
Office of Human Development
Project Head Start Program Information Report
Semi-annually
Head Start Grantees & Delegate Agencies 3,900 responses; 5,850 hours
Barbara F. Young, 395–6132
Office of Human Development
*Intake and Service Summary Form; Youth Served on a One-Time Basis by the Rya-Funded Projects; YDB[1]

[1] Conditional approval granted for the intake and service summary report for the runaway youth

Footnotes continued on next page

Summary sheet
Other (see SF–83)
Staff of Runaway Youth Projects; Client Files 33,980 responses; 8,745 hours
Barbara F. Young, 395–6132

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

Extensions

Community Planning and Development
Application for Federal Assistance, Community
Development Program, and Assurances
Hud 6757, 7015.12
On occasion
Federally Assisted New Communities 50 responses; 250 hours
Arnold Strasser, 395–5080

Housing Management
Application for Tenant Eligibility Under the Section
236 Program
HUD–93131
On occasion
Low and Moderate Income Households 100,000 responses; 50,000 hours
Arnold Strasser, 395–5080

Reinstatements

Housing Production and Mortgage Credit
Contractor's and/or Mortgagor's Cost Breakdown
FHA–2205, 2328, and 2330A
On occasion
Description not Furnished by Agency 4,380 responses; 43,230 hours
Arnold Strasser, 395–5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526

New Forms

Law Enforcement Assistance Administration
National Criminal Justice Reference Service User
Registration for Services
LEAA 1431/2
Single time
Users of NCJRS 43,000 responses; 4,300 hours
Laverne V. Collins, 395–3214

Offices, Boards, Division
Civil Litigation Project: Screener, Individual
Disputant, and Attorney Questionnaires
Single time
Disputants and Their Attorneys 150 responses; 108 hours

Off. of Federal Statistical Policy & Standard, 673–7974

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

New Forms

Employment and Training Administration
*Semimonthly Weatherization Effort[2]
ETA–RC27
Monthly
State and Local Agencies 2,360 responses; 590 hours
Arnold Strasser, 395–5080

Reinstatements

Employment and Training Administration
*Semi-monthly Enrollment Levels of On-Board PSE CETA
Participants
ETA–17
Monthly
State and Local Agencies 5,664 responses; 1,416 hours
Arnold Strasser, 395–5080

Employment and Training Administration
Payment Activities Under the Disaster Relief Act of 1974
ETA–5–32 & TWX
Monthly
SESA's Where Major Disasters Occur 600 responses; 600 hours
Arnold Strasser, 395–5080

DEPARTMENT OF STATE (EXC. AID)

Agency Clearance Officer—Gail J. Cook—632–3538

New Forms

"Evans Amendment Questionnaire" (Short Title)
On occasion
So. African Purchasers of EX–IM–Backed U.S. Exports 60 responses; 1,600 hours
C. Louis Kincannon, 395–3772

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

Reinstatements

Coast Guard
*Defect Notification Report
Campaign Progress Report
CG–4917 & 4918
On occasion
Boat Manufacturers 1,125 responses; 563 hours
Susan B. Geiger, 395–5867

GENERAL SERVICES ADMINISTRATION

Agency Clearance Officer—John F. Gilmore, 566–1164

Revisions

Agency Information Program Data
SF–311
Single time
Federal Agencies 1 response; 1 hour
Off. of Federal Statistical Policy & Standard, 673–7974

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-31754 Filed 10-12-79; 8:45 am]
BILLING CODE 3110-01-M

Footnotes continued from last page
program has expired. The law (44 U.S.C. 3509)* prohibits continued use of this report pending OMB action on the reinstatement request.

[2]The information request covered by this item was issued as a reporting requirement by the Department's Employment and Training Administration in Field Memorandum No. 463–79 dated September 26, 1979. This requirement, issued in violation of the Federal Report Act of 1942, has subsequently been approved by OMB as required by that Act.

Privacy Act; New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect on such proposal on the privacy and other personal or property rights of individuals . . ."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between September 17, 1979 and September 28, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

NATIONAL LABOR RELATIONS BOARD

System Name

Applicant Files for Attorney and Field Examiner Positions; Employment and Performance Records, Attorneys and

Field Examiners; Employment and Performance Records, Nonprofessionals and Nonlegal Professional; and Payroll-Finance Records.

Report Date

September 21, 1979.

Point-of-Contact

Mr. William A. Lubbers, Executive Director, National Labor Relations Board, Washington, DC 20570.

Summary

These systems of records were reported as part of a general review and revision of NLRB system notices; changes to other notices were nonsubstantive. The "Applicant Files for Attorney and Field Examiner Positions" have been expanded to include all applicants for such positions, rather than applicants to the General Counsel's staff alone. The records in the system include employment applications, transcripts, resumes, interview reports, and other relevant information. The system identified as "Employment and Performance Records, Attorneys and Field Examiners" constitutes the merger of two previously reported systems which included appraisals for attorneys in the General Counsel's, Board Members', and Solicitor's Offices. The third system, "Employment and Performance Records, Nonprofessionals and Nonlegal Professionals," also is the result of the merger of two other systems of records, which had separated the evaluations of clerical in the field and in the Washington offices of NLRB. Finally, "Payroll-Finance Records" results from the consolidation of existing finance records and NLRB's data processing file.

DEPARTMENT OF JUSTICE

System Name

U.S. National Central Bureau of the International Criminal Police Organization (INTERPOL) Criminal Investigative Records System.

Report Date

September 27, 1979.

Point-of-Contact

Administrative Counsel, Management Systems Policy Staff, Department of Justice, Washington, DC 20530.

Summary

The system has been transferred from the Treasury Department, which had previously reported it, to the Justice Department, pursuant to an order of the Attorney General. In implementing the system, the Justice Department will also automate it. The system consists of information obtained during the investigation of international criminal offendors, to be used by Interpol agents, as well as local, State, and Federal law enforcement agencies. The automation of the system will, according to the Justice Department report, provide additional security for the records, and facilitate the production of statistical, workload, and performance reports.

DEPARTMENT OF AGRICULTURE

System Name

Nonviolation Case File System on Individuals Subject to the U.S. Grain Standards Act or Agricultural Market Act of 1946.

Report Date

September 28, 1979.

Point-of-Contact

Mr. Burt C. Hawkins, Room 1090 South Building, Agriculture Market Service, U.S. Department of Agriculture, Washington, DC 20250.

Summary

This system of records will be maintained by the Federal Grain Inspection Service of USDA on individuals who are subject to the named statutes and activities which may lead to violations of those statutes. The records will be used only within the Federal Grain Inspection Service.

David Leuthold,

Budget and Management Officer.

[FR Doc. 79-31717 Filed 10-12-79; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16249; File No. SR-MSTC-79-2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 21, 1979, the above-mentioned self regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms and Substance of the Proposed Rule Change

Additions Italicized—[Deletions Bracketed]

Article III, Section 2 of the Midwest Securities Trust Company Bylaws are hereby amended as follows:

Article III—Directors

Number, Tenure, and Election

Section 2. The board of directors of the Corporation shall be composed of [six] *seven* Class A Directors and [five] *six* Class B Directors. Except as expressly provided otherwise in this Article III, the powers, rights, duties and obligations of Class A Directors and Class B Directors shall be identical. Each director shall hold office until the next annual meeting of shareholders or until his successor shall have been elected and qualified. The Class A Directors shall be appointed by the sole shareholder of the Corporation, the Midwest Stock Exchange and shall be selected with a view towards providing fair representation for the interests of said Exchange and of those members of said Exchange which are participants of the Corporation. Class B Directors shall be selected and appointed as follows:

1. Not less than sixty days before each annual meeting of shareholders, the sole shareholder shall nominate (by delivering to the Secretary of the Corporation a list of nominations) [five] *six* individuals for election as Class B Directors. Within five days thereafter, the Secretary shall mail copies of the list of nominations to each participant of the Corporation which is not a member of the Midwest Stock Exchange ("Non-Member Participant"). Non-member Participants shall have the right to nominate additional persons by filing with the Secretary, not less than thirty days prior to the annual meeting, a petition signed by not less than three Non-Member Participants. No petition shall nominate more than [five] *six* individuals, and no participant shall sign petitions nominating, in the aggregate more than [five] *six* individuals.

2. In the event that no nominating petition is filed within the time prescribed above, the sole shareholder shall, at the annual meeting, appoint as Class B Directors the individuals named in the list of nominations mailed to Non-Member Participants; provided that if any such individual shall at that time be unable or unwilling to serve, that individual's position shall be left vacant until the first meeting of directors following the annual meeting of shareholders, and the sole shareholder shall thereafter appoint, to fill the vacancy, such individual as a majority of the other Class B Directors shall approve.

3. In the event that one or more nominating petitions are filed within the prescribed time, the Class B Directors shall be selected by an election, to be conducted as follows:

(a) Not less than twenty days prior to the annual meeting, the Secretary shall transmit to each Non-Member Participant a ballot setting forth the names of all nominees, including those nominated by petition, and the number of votes to which the Non-Member Participant is entitled, determined as hereinafter set forth.

(b) The number of votes to which each Non-Member Participant shall be entitled shall be determined as follows:

(1) There shall be determined, for each Non-Member Participant, (A) the ratio (expressed as a percentage) between the aggregate fees paid to the Corporation by the Non-Member Participant during the

Corporation's most recent fiscal year and the total fees paid by all participants during such fiscal year; and (B) the ratio (expressed as a percentage) between the average value of the securities held by the Non-Member Participant in depository free or pledged positions with the Corporation during such fiscal year (determined by taking the average of the values of the securities so held as of the close of each month during such fiscal year) and the average value of the securities so held by all participants during such fiscal year (determined in the same manner).

(ii) The percentages determined in accordance with clauses (b)(i)(A) and (b)(i)(B), above, shall be added together, and each Non-Member Participant shall be entitled to that number of votes which bears the same proportion to 1,000 as the sum of such percentages bears to 100%. The total number of votes to which Non-Member Participants in the aggregate shall be entitled in any election of Class B Directors shall be the number (not exceeding 2,000) determined pursuant to the preceding sentence.

(iii) If the aggregate number of votes to which all Non-Member Participants are entitled shall be less than 1,000, the sole shareholder shall be entitled to as many votes as the difference between 1,000 and the number of votes to which all Non-Member Participants are entitled, and the Secretary shall provide to the sole shareholder an appropriate ballot.

(c) Each Non-Member Participant (and the sole shareholder, if the sole shareholder shall be entitled to vote) shall have the right to cast the number of votes to which it shall be entitled for as many nominees as there are positions to be filled, or to cumulate said votes, and to give one nominee as many votes as the number of positions multiplied by the number of said votes, or to distribute its votes on the same principle among as many nominees as it shall desire.

(d) At the annual meeting, the sole shareholder shall appoint as Class B Directors the [five] *six* individuals receiving the highest number of votes in ballots returned to the Secretary prior to the time of the annual meeting.

Statement of Basis and Purpose

The purpose of the rule change is to increase the level of participation on the Board of Directors of MSTC by Participant Banks and Brokers. By increasing the number of Class A Directors and Class B Directors by one for each class, the MSTC Board will become more representative of its shareholders and participants (both MSE members and Non-MSE members).

Section 17A(b)(3) of the Act mandates that the rules of a registered clearing agency will assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs.

The Midwest Securities Trust Company has neither solicited nor received any comments.

The Midwest Securities Trust Company believes that no burden has been placed on completion.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 5, 1979.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 5, 1979.

[FR Doc. 79-31662 Filed 10-12-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16251; File No. SR-OCC-79-6]

Self-Regulatory Organization; Proposed Rule Change by the Options Clearing Corp.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 25, 1979, the above-mentioned self-regulatory organization fied with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would establish a "third-party pledge" system for puts, under which treasury bills deposited by put writers in lieu of customer margin could be used by Clearing Members in lieu of margin at OCC.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

OCC's rules currently provide for a procedure known as a "third-party pledge." Under that procedure, the writer of a call option deposits the underlying securities with a securities depository (either directly, if the writer is a depository participant, or indirectly, through a bank or other custodian). The securities are then transferred or pledged on the books of the depository to OCC for the account of the Clearing Member that carries the customer's short position, thus relieving the Clearing Member of the need to deposit margin with OCC in respect of that position.

The purpose of the proposed rule change is to provide a third-party pledge system for writers of put options. Under OCC's present rules, a Clearing Member that carries short positions in puts must deposit margin for those positions with OCC. By contrast, under the rules of the Exchanges and under Regulation T, a broker that carries a short position in puts for a customer need not obtain margin from the customer if the customer delivers to the broker a "letter of guarantee" from a bank, in which the bank represents that the customer has deposited cash in an amount equal to the aggregate exercise price of the short position, and the bank agrees to deliver that cash to the broker upon assignment of an exercise notice to the customer's short position, against delivery of the underlying securities. The staff of the Board of Governors of the Federal Reserve System has expressed the view that cash so deposited may properly be invested by the bank in treasury bills.*

Under the proposed rule change, a put writer who deposits cash with a bank, which then invests it in treasury bills, could instruct the bank, in lieu of issuing a letter of guarantee, to deposit the treasury bills with a securities depository, with instructions to transfer or pledge them to OCC for the account of the Clearing Member carrying the writer's short position. Upon receiving notice of such a deposit, OCC would reduce the Clearing Member's margin requirement accordingly.

The proposed procedure would operate in substantially the same manner as the third-party pledge system presently in effect for writers of calls, except that it would involve one additional step in the event that OCC found it necessary to take possession of the deposited securities to satisfy an exercise. In the case of a call, the deposited securities are the underlying securities themselves. If an exercise notice were to be assigned to the writer at a time when the writer's Clearing Member was suspended, so that it became necessary for OCC to effect settlement with the exercising Clearing Member, OCC would do so by taking possession of the deposited securities and delivering them to the exercising Clearing Member against payment of the exercise price. In the case of a put, OCC would also take possession of the deposited securities, but it would then take the additional step of selling them out in order to obtain the cash required for settlement with the exercising Clearing Member. Any excess proceeds would then be paid over to the suspended Clearing Member or its representative.

The specific rule changes proposed in this filing are as follows:

Rules 601 and 602 would be revised to exempt from OCC's margin requirements all short positions in puts for which treasury bills are deposited in accordance with proposed Rule 612.

Proposed Rule 612 would establish a procedure for depositing treasury bills in

*Letter dated June 6, 1978 from Laura Homer, Chief Attorney, Securities Regulation, to A. James Huff, Director, Department of Compliance, CBOE.

respect of short positions in puts, similar to the third-party pledge procedure for calls provided in Rule 610.

Rule 1104 would be revised to give treasury bills deposited by a Clearing Member's customers in respect of short positions in puts the same treatment as underlying securities deposited by customers in respect of calls, in the event of the Clearing Member's suspension.

Rule 1106 would be revised to provide for the continued maintenance, after a Clearing Member's suspension, of short positions in puts for which treasury bills have been deposited by the Clearing Member's customers, and for the disposition of such treasury bills when the short positions are transferred, assigned, closed out, or expire.

Rule 1107, dealing with the disposition of exercised option contracts to which a suspended Clearing Member was a party at the time of its suspension, would be revised to cover put option contracts for which treasury bill were deposited as well as call option contracts for which underlying securities were deposited.

The proposed rule change would promote the public interest by establishing more efficient procedures for satisfying OCC's margin requirements in respect of short positions in puts, and by eliminating the need for Clearing Members to deposit margin at the OCC level in respect of short positions in puts that are fully covered at the customer level.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change would impose any burden on competition.

On or before November 19, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C., 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 5, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-31661 Filed 10-12-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16250 File No. SR-SCCP 79-13]

Self-Regulatory Organizations; Proposed Rule Change by Stock Clearing Corp. of Philadelphia

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 21, 1979, the above-mentioned self regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia proposes an amendment to Rule 21, Statements, which will bring the language of the rule into conformity with the current practice and administration. The text of the proposed rule change is attached as Exhibit 1.

Statement of Basis and Purpose of Proposed Rule Change

The purpose of the proposed rule change is to promote efficiency in statements issued to members and to facilitate month-end verification of positions by members.

The proposed rule change will enable SCCP to facilitate the promote and accurate clearance and settlement of securities transactions for which it is responsible in accordance with the purposes set forth in Section 17A(b)(3)(f) of the Act.

Comments were neither solicited nor received from members, participants, or others on the proposed rule change.

No burden on competition will be imposed by the proposed rule change. The proposed rule change does not discriminate between marketplaces nor does it inhibit clearing interfaces.

On or before November 19, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed Rule change; or

(B) Institute proceedings to determine whether the proposed Rule Change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 5, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 5, 1979.

Exhibit 1.—Stock Clearing Corporation of Philadelphia; Text of Proposed Rule Change

Rule 21. Stock Clearing Corporation will render to clearing members a daily Bookkeeping Form, a daily pending transfer, and a monthly fail statement (for trade-for-trade accounts). These statements must be verified upon receipt, and any exceptions or corrections promptly reported to Stock Clearing Corporation.

As of the last Friday of each month except December, which will be as of the last business day, Stock Clearing Corporation will issue to clearing members a month-end exception letter indicating whether the statements received on that day are accurate for each type of account (CNS, margin, trade-for-trade, depository, or transfer). If a statement is incorrect, any differences should be reported on research requests to be enclosed with the exception letter. The verification letter must be signed by the member and returned to Stock Clearing Corporation by the 15th day of the month following the date of the statement.

[FR Doc. 79-31663 Filed 10-12-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 79-097]

National Environmental Policy Act (NEPA) Implementing Procedures

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed revision of agency procedures.

SUMMARY: The U.S. Coast Guard proposes to revise its procedures for considering environmental impacts. This is in accordance with the regulations for implementing the National Environmental Policy Act issued by the

Council on Environmental Quality on November 29, 1978. Public comments are invited on the proposed USCG Instruction.

DATES: Comments must be received by November 5, 1979.

ADDRESS: Written comments should reference this notice and be addressed to: Commandant (G-WEP-7), U.S Coast Guard Headquarters, 2100 Second St. S.W. Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Room 1203 at the above address.

FOR FURTHER INFORMATION CONTACT: Don C. W. Dumlao, Chief, Environmental Impact Branch, U.S. Coast Guard (G-WEP-7), 2100 Second St. S.W., Washington, D.C. 20590 (202) 426-3300.

SUPPLEMENTARY INFORMATION:

Background

In 1970 the Council on Environmental Quality (CEQ) issued Guidelines for preparation of environmental impact statements (EIS) under Executive Order 11514. The Guidelines were issued to implement Section 102(2)(C) of the National Environmental Policy Act (NEPA). In 1973 CEQ provided guidance to agencies for preparation of environmental impact statements. As a result the Coast Guard developed Commandant Instruction 16475.1 entitled Procedures for Considering Environmental Impacts. On November 29, 1978 CEQ published final regulations in response to Executive Order 11991 to establish uniform procedures to implement all procedural provisions of NEPA (43 FR 55978). Federal agencies were directed to adopt implementing procedures to supplement the regulations published by CEQ (40 CFR 1507.3). Using as a basis the Department of Transportation (DOT) Order 5610.1C, which implements the CEQ regulations for DOT, the proposed Coast Guard instruction would set forth specific policies, responsibilities, and procedures for Coast Guard implementation of the CEQ regulations. The proposed procedures are in the form of an internal directive, Commandant Manual Instruction M16475.1A series, National Environmental Policy Act Implementing Procedures, and will replace Commandant Instruction 16475.1 CEQ regulations require that the proposed Coast Guard procedures be effective July 30, 1979. Until the proposed Coast Guard procedures are finalized, the CEQ regulations and DOT Order 5610.1C are being followed as stated in a previous Coast Guard internal directive (COMDTNOTE 16476 of June 29, 1979).

Comments

The Coast Guard is interested in receiving comments on these procedures from all interested parties. The Coast Guard will consider all comments received on or before the closing date, and will consider any comments received after that date to the maximum extent practicable. The following is the full text of the proposed Coast Guard instruction described above less enclosure (1) which was previously published in the Federal Register (Oct. 1, 1979, 44 FR 56420):

Commandant Instruction M16475.1A

Subj: National Environmental Policy Act (NEPA) Implementing Procedures.

Ref: (a) P.L. 91-190 National Environmental Policy Act (NEPA).

(b) 40 CFR Parts 1500-1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

(c) Coast Guard Planning and Programming Manual M16010.1.

(d) Procedures Guide for the Coast Guard Regulatory System.

1. *Purpose.* This Manual Instruction establishes policy and prescribes responsibilities and procedures for Coast Guard implementation of references (a) and (b).

2. *Directives Affected.* COMDTINST 16475.1 dated 1 July 1975 is hereby cancelled.

3. *Action.* District commanders, unit commanding officers, and chiefs of responsible program offices shall ensure that the provisions of this instruction are followed in the consideration of environmental impacts of Coast Guard actions. Program guidance in implementing this instruction shall be submitted by program managers to Commandant via (G-WEP-7) for review and concurrence with this instruction prior to issuance.

4. *Changes.* Recommendations for improvement of Coast Guard procedures for considering environmental impacts shall be submitted to the Commandant (G-WEP-7).

Table of Contents

Chapter 1. Introduction

A. Background

1. National Environmental Policy Act (NEPA). NEPA, reference (a), sets the national charter for the protection of the environment. NEPA procedures ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore and/or enhance the environment.

2. Council on Environmental Quality (CEQ) Regulations. The CEQ regulations, reference (b), establish and mandate policy requirements, binding on all Federal Agencies, for implementing NEPA and related statutory requirements.

3. Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts. DOT Order 5610.1C, enclosure (1), sets forth policy and procedures that supplement the CEQ regulations and applies them to DOT programs. The Coast Guard shall comply with the CEQ regulations and the provisions of the DOT Order.

4. Purpose. This Manual Instruction prescribes policies, responsibilities, and procedures for Coast Guard implementation of references (a) and (b), and supplements the DOT Order.

5. Applicability. All Coast Guard actions, as defined in this Manual Instruction, shall be subject to and consistent with the procedures and intent of references (a) and (b), the DOT Order (Enclosure (1)), and the requirements of this Instruction.

B. Responsibility

1. Chief, Office of Marine Environment and Systems (G-W). The Chief, Office of Marine Environment and Systems (G-W), has the primary responsibility to establish and maintain a coordinated Coast Guard environmental program.

2. Chief, Marine Environmental Protection Division (G-WEP). The Chief, Marine Environmental Protection Division (G-WEP), has the responsibility to insure compliance with reference (a) and other related environmental legislation.

3. Chief, Environmental Impact Branch (G-WEP-7). The Chief, Environmental Impact Branch (G-WEP-7), has the responsibility to develop and promulgate procedures to implement and direct compliance with references (a), (b), and related legislation. G-

WEP-7 shall serve as the point of contact for coordination and review of Coast Guard and non-Coast Guard environmental documents.

4. Chief, Bridge Division (G-WBR). Shall be responsible for environmental documentation and review for the Bridge Administration Program, except as provided in paragraph 2-H-2 and 2-I-3, and obtaining concurrence from the DOT Office of Environment and Safety (P) as required to process bridge permit applications.

5. Chiefs of Responsible Headquarters Program Offices. Have the responsibility to implement the procedures in this instruction for Headquarters originated actions and those district actions so designated by the responsible Headquarters program office. This responsibility shall include: coordinating, directing, and assisting in the preparation of environmental documentation and guidance for their respective program.

6. District Commanders. Have the responsibility to implement the procedures in this instruction for all district originated actions, except those specifically designated by a responsible Headquarters program office.

C. Use and Organization of this Instruction

1. Use. This instruction should be used in conjunction with references (b), (c), and (d), and as a supplement to DOT Order 5610.1C (Enclosure (1)) for consideration of environmental impacts of Coast Guard actions.

2. Organization. The material in Chapter 2 of this instruction supplements specific paragraphs in DOT Order 5610.1C (enclosure (1)) and is cross-referenced by including paragraph numbers of the DOT Order (in parentheses) to which it applies. Additional chapters providing guidance in meeting new or changed requirements will be added to this Manual Instruction as necessary.

Chapter 2. Coast Guard Supplementary Implementing Instructions to DOT Order 5610.1C (Enclosure (1))

A. Planning and Early Coordination

1. (3.c.) Scoping. All interested or affected parties (Federal, state, local, private) shall be notified and invited to participate in the early consultation process for all Coast Guard actions not categorically excluded in paragraph 2-B-3. below. Written notification shall be given to all state clearinghouses and parties having statutory or regulatory involvement. All other interested parties may be informally contacted; however, in all cases the responsible official shall maintain a written record of contacts made and responses received. For actions requiring preparation of an EIS, the scoping process shall be followed as described in Section 1501.7. of reference (b).

B. Environmental Processing Choice

1. (4.a.) Actions Covered. In addition to those types of actions listed in the DOT Order, this instruction applies to these Coast Guard actions: The decision to relocate, sell, dismantle, decommission, or close Coast Guard facilities; and research activities that have techniques or programs with potentially significant environmental effects during testing or implementation.

2. (4.b.) Environmental Impact Statement. Coast Guard actions which normally require an EIS include:

a. Actions assessed and found to have potentially significant environmental effects;

b. Actions having significant environmental effects on the global commons as described in section 2.3 of Executive Order 12114 dated 5 January 1979;

c. Actions which generate significant controversy because of effects on the human environment;

d. Actions having a significant effect on:

(1) Property protected under section 4(f) of the DOT Act;

(2) Wetlands;

(3) Endangered species; and

(4) significant cultural resources.

3. (4.c.5) Categorical Exclusions. In addition to those actions listed in paragraph 4.c. of Enclosure (1) and subject to paragraph 2-B-4 of this instruction, the following actions are not normally major Federal actions that require an environmental impact statement (categorical exclusions):

a. Actions involving repair and maintenance of existing Coast Guard facilities and which do not result in substantial change in functional use (e.g. replacement of existing materials or equipment, exterior maintenance and repair, interior maintenance, repair and alteration, maintenance dredging, maintenance of floating and fixed aids to navigation, etc.);

b. Actions to lease, acquire or construct facilities for Coast Guard personnel in areas currently zoned for that purpose and where such facilities are consistent with or approved by the local land use authority (e.g. lease or purchase of existing buildings without changing functional use, purchase or construction of housing in an approved residential subdivision etc.);

c. Actions performed as part of the Coast Guard's statutory authority to conduct investigations, inspections, or to issue permits and licenses which do not directly affect the environment (e.g. commercial vessel documentation and inspection, facility inspections, merchant seaman documentation, Marine Boards of Inquiry, Boating Safety Detachment Team inspection of recreational boats, ets);

d. Review entailing studies, reports, analyses, etc. of legislative proposals not originating in DOT and relating to matters not the primary responsibility of the Coast Guard;

e. Excessing of Coast Guard property to the General Services Administration;

f. Bridge permit actions which can accurately be described as one of the following:

(1) Reconstruction or modification of an existing bridge on essentially the same alignment or locations by widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, pipelines or fender works, except bridges with historic significance;

(2) Reconstruction or modification of an existing one lane bridge presently serviced by a two lane road and used for two way traffic, to a two way bridge on essentially the same alignment or locations, except bridges with historic significance;

(3) Construction of pipeline bridges for transporting potable water;

(4) Construction of pedestrian, bicycle and/or equestrian bridges;

(5) Temporary replacement of a bridge which commences immediately after the occurrence of a natural disaster or catastrophic failure where such bridge project is related to public safety, health and welfare;

(6) Approval of extension of time to commence or complete construction or to remove an existing or temporary bridge;

(7) Approval of deviations from approved plans prior to completion of construction which do not significantly alter the approved locations, plans, or environmental impacts;

(8) Promulgation of operating regulations for drawbridges.

g. Actions performed as a part of Coast Guard operations to carry out statutory authority in the areas of maritime safety, protection of the environment, or military readiness (e.g. establishment of security zones, search and rescue, law and treaty enforcement, removal of oil or hazardous substances, military operations to maintain proficiency, actions to protect public safety, establishment of floating and minor fixed aids to navigation except electronic sound signals, etc.).

h. Administrative or procedural regulations which clearly do not have any environmental impacts.

4. Restrictions on Categorical Exclusions. Environmental assessments or EISs, as appropriate, shall be prepared for actions which would otherwise be classified as categorically excluded, but which are likely to involve: (1) significant impacts on the environment; (2) substantial controversy because of effects on the human environment; (3) impacts which are more than minimal on properties protected under section 4(f) of the DOT Act and section 106 of the Historic Preservation Act; or (4) inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

C. Finding of No Significant Impact (FONSI)

1. (5.a.) Format. For Coast Guard purposes a FONSI shall be a separate document which incorporates by reference or attachment an environmental assessment.

2. (5.b.) Coodination. To ensure copies of the FONSI and it's environmental assessment are available to the public upon request, the originator shall forward copies to Commandant (G-WEP-7) and the responsible Headquarters program office as well as retain a copy in the originator's file.

3. (5.c.) Provisions of FONSI's to DOT. A FONSI required to be provided to the DOT Office of Environment and Safety (P) shall be forwarded via Commandant (G-WEP-7) by the responsible Headquarters program office.

D. Lead Agencies and Cooperating Agencies

1. (6.a.) Responsibility. For district-originated actions the district commander or his designee will assume responsibility for maintaining Coast Guard lead agency status. The Chief of the responsible Headquarters program office or his designee will assume this responsibility for Headquarters-

originated actions. In extraordinary circumstatnces (e.g. an action transcends more than one district, etc.) the responsible Headquarters program office via Commandant (G-WEP-7) shall designate the individual responsible for maintaining Coast Guard lead agency status.

2. (6.b.) Resolution of Lead Agency Designation. Notification of P shall be made via Commandant (G-WEP-7) by the responsible Headquarters program office.

3. (6.c.) Joint Lead Agency Designation and CEQ referrals. Notification and referrals to P shall be made via Commandant (G-WEP-7). Commandant (G-WEP-7) shall be notified in all cases where the Coast Guard receives a request for Coast Guard participation as a joint lead or cooperating agency.

E. Preparation and Processing of Draft Environmental Impact Statements

1. (7.b.) Timing of Preparation of Draft Statements. For other than rulemaking actions Appendix P of reference (c) provides correlations of the NEPA process with the Coast Guard's Planning, Programming and Budgeting System. For rulemaking actions the Environmental Assessment of Regulatory Actions Section contained in reference (d) provides similar guidance.

2. (7.f.) Circulation of Draft Environmental Impact Statements. The originator or the responsible Headquarters program office shall forward twelve (12) copies of all draft EIS's to Commandant (G-WEP-7) for transmittal to Environmental Protection Agency's Office of Environmental Review, other headquarters offices and DOT as appropriate.

F. Review of Environmental Statements Prepared by Other Agencies

1. (9.f.) Comments on Non-Coast Guard EIS's. One copy of all Coast Guard comments shall be sent to Commandant (G-WEP-7)

G. Predecision Referrals to the Council on Environmental Quality

1. (10.a.1) DOT Lead Agency Proposals. District commanders and Headquarters program offices receiving a notice of intended referral from another agency shall provide P with a copy of the notice via Commandant (G-WEP-7).

H. Final environmental Impact Statement

1. (11.c.) Legal Review. District legal officers shall review EIS's for bridge permit actions that originate within their district. The Office of Chief Counsel shall provide final review of those EIS's requiring concurrence of P.

2. (11.d.) Internal processing. The Chief, Office of Marine Environment and Systems (G-W) shall have the authority to approve all Coast Guard EIS's. G-W delegates to district commanders the authority to approve Coast Guard EIS's for actions that originate within and having effects confined to their respective district except those requiring P concurrence: P concurrence will be obtained by the responsible Headquarters program office via Commandant (G-WEP-7).

3. (11.h.) Availability of Statements to Environmental Protection Agency and the Public. Transmittal of the final statements to Environmental Protection Agency shall follow the method stated for draft statements in Paragraph 2-E-2 of this instruction.

I. Determinations Under Section 4(f) of the DOT Act

1. (12.a.) Integration of 4(f) Statement with EIS's. Originators of EIS's for Coast Guard actions requiring determinations under section 4(f) of the DOT Act shall incorporate the required 4(f) determination in the EIS.

2. (12.b.) Legal Review. District legal officers shall review Coast Guard section 4(f) determinations for projects that originate within their district that do not require the concurrence of P. The Office of Chief Counsel (G-L) shall provide final legal sufficiency review of all other Coast Guard Section 4(f) determinations.

3. Approval of 4(f) Statements. Approval of 4(f) statements for actions not requiring an EIS shall be made by Commandant (G-W) when P concurrence is required. When P concurrence is not required district commanders are delegated the authority for approving 4(f) statements for district originated actions, and chiefs of responsible Headquarters program offices, with Commandant (G-W) concurrence, shall have this authority for Headquarters actions not requiring P concurrence.

J. Citizen Involvement Procedures

1. (14.b.) Notice of Intent. As soon as the decision to prepare an EIS has been made the required Federal Register Notice of Intent shall be published via Commandant (G-WEP-7) by the responsible Headquarters program office.

2. (14.d.) A-95 Clearinghouse Review. Originators of EIS's shall solicit comments from A-95 clearinghouses of affected states on the environmental consequences of the proposed action. The EIS shall evidence this solicitation and consideration of comments received.

3. (14.f.) Coast Guard Public Contact Point. Interested persons can obtain copies and the status of Coast Guard environmental assessments/FONSI's or EIS's and obtain information on other elements of the NEPA process by contacting the appropriate address below:

COMMANDANT (G-WEP-7), U.S. Coast Guard, 2100 Second St., S.W. Washington, D.C. 20590, (202) 426-3300.
COMMANDER (dp1), First Coast Guard District, 150 Causeway St., Boston, MA 02114, (617) 223-6915.
COMMANDER (dp1), Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 279-5012.
COMMANDER (dp1), Third Coast Guard District, Governors Island, New York, NY 10004, (212) 664-7001.
COMMANDER (dp1), Ninth Coast Guard District, 1240 East 9th St., Cleveland, OH 44199, (216) 293-3919.
COMMANDER (dp1), Eleventh Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822, (213) 984-9287.
COMMANDER (dp1), Twelfth Coast Guard District, 630 Sansome St., San Francisco, CA 94126, (415) 556-6074.
COMMANDER (dp1), Thirteenth Coast Guard District, Federal Bldg., 914 Second Ave., Seattle, WA 98174, (206) 399-7523.
COMMANDER (dpl), Fifth Coast Guard District, Federal Bldg., 431 Crawford St., Portsmouth, VA 23705, (804) 924-9277.
COMMANDER (dpl), Seventh Coast Guard District, Federal Bldg., 51 S.W. 1st Ave., Miami, FL 33130, (813) 350-5503.
COMMANDER (dpl), Eighth Coast Guard District, Hale Boggs, Federal Bldg., 500 Camp St., New Orleans, LA 70130, (504) 682-2964.
COMMANDER (dpl), Fourteenth Coast Guard District, Prince Kalanianaole Bldg., 300 Ala Moana Blvd., Honolulu, HI 96850, (808) 556-0220/546-2861.
COMMANDER (dpl), Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, AK 99802, (907) 399-0150/586-7384.

4. (14.f.) Coast Guard Public Contact Point for Bridge Permits. Interested persons and applicants for Coast Guard bridge permits can obtain full information on the Coast Guard Bridge Administration Program by contacting the appropriate addressee listed below:

COMMANDANT (G-WBR), U.S. Coast Guard, 2100 Second St. S.W., Washington, D.C. 20590, (202) 426-0942.
COMMANDER (obr), First Coast Guard District, 150 Causeway St., Boston, MA 02114, (617) 223-0645.
COMMANDER (obr), Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 279-4607.
COMMANDER (oan), Third Coast Guard District, Governors Island, New York, NY 10004, (212) 664-7165.
COMMANDER (obr), Ninth Coast Guard District, 1240 East 9th St., Cleveland, OH 44199, (216) 293-3993.
COMMANDER (oan), Eleventh Coast Guard District, Union Bank Bldg., 400 Oceangate Blvd., Long Beach, CA 90822, (213) 984-9222.
COMMANDER (oan), Twelfth Coast Guard District, 630 Sansome St., San Francisco, CA 94126, (415) 556-8668.
COMMANDER (oan), Thirteenth Coast Guard District, Federal Bldg., 914 Second Ave., Seattle, WA 98174, (206) 399-5876.
COMMANDER (oan), Fifth Coast Guard District, Federal Bldg., 431 Crawford St., Portsmouth, VA 23705, (804) 924—9226.
COMMANDER (oan), Seventh Coast Guard District, Federal Bldg., 51 S.W. 1st. Ave., Miami, FL 33130, (813) 305-4103.
COMMANDER (obr), Eighth Coast Guard District, Hale Boggs, Federal Bldg., 500 Camp St., New Orleans, LA 70130, (504) 682-2965.
COMMANDER (oan), Fourteenth Coast Guard District, Prince Kalanianaole Bldg., 300 Ala Moana Blvd., Honolulu, HI 96850, (808) 556-0220/556-7130.
COMMANDER (oan), Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, AK 99802, (907) 399-0150/586-7367.

K. Proposals for Legislation

1. (15.a.) Preparation. The responsible Coast Guard Headquarters program office shall prepare the environmental documentation for legislative proposals or favorable reports on proposed legislation for which the Coast Guard is primarily responsible.

2. (15.b.) Processing. The EIS shall be processed as required in paragraph 15.b. of

the DOT Order via commandant (G–WEP–7).

L. Timing of Agency Action

1. (17.b.) Reduction of Prescribed Time Periods. Request to reduce prescribed time periods for EIS processing shall be made via Commandant (G–WEP–7) to EPA.

2. (17.c.) Emergency Circumstances. In emergency circumstances CEQ will be consulted through P via Commandant (G–WEP–7).

M. Mitigating Measures. The responsible program manager, district commander, or Commanding Officer of Headquarters unit as appropriate, shall assure the executive of all mitigating measures stated in the final EIS and record of decision for all Coast Guard actions for which an EIS has been prepared.

Dated: October 3, 1979.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc. 79-31470 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-14-M

[CGD 79-139]

Proposed Replacement of the Calhoun Street Bridge Across the Delaware River Between Trenton, NJ and Morrisville, Pa.; Public Hearing

The Commandant has authorized a public hearing to be held by the Commander, Third Coast Guard District on 15 November 1979 from 10:00 a.m. to 1:00 p.m. at the Trenton City Hall, Council Chambers, 319 East State Street, Trenton, New Jersey and from 7:00 p.m. to 10:00 p.m. at the Morrisville Junior-Senior High School, West Palmer Street, Morrisville, Pennylvania.

Under consideration is the application by the Delaware River Joint Toll Bridge Commission for the replacement of the existing tax-supported two-lane Calhoun Street Bridge with a new, four-lane toll revenue supported bridge structure. The proposed replacement structure would be constructed across the Delaware River and the Pennsylvania Canal immediately adjacent to and downstream of the existing bridge. The existing Calhoun Street Bridge built in 1884, and on the National Register of Historic Places, is in a deteriorated condition and presently has a load restriction on it for vehicular traffic. The existing structure will remain in place and serve as a pedestrian/bicycle bridge. The proposed four-lane structure would connect Route 32 and Trenton Avenue in Morrisville, Pennsylvania with Calhoun Street and Route 29 in Trenton, New Jersey.

The proposed structure will provide a minimum vertical clearance (measured at the Pennsylvania side) of 24.8'± above normal pool elevation, measured to the underside of the bridge. The bridge rises progressively toward New Jersey and provides a minimum vertical clearance of 26.4'± above normal pool elevation, through the channel closest to New Jersey. A vertical clearance of 15'± will be provided in the Pennsylvania Canal above normal pool elevation. A horizontal clearance of 174'± between face-of-piers measured normal to the axis of the channel will be provided through those spans exhibiting 182'–0"± clear span lengths.

A Draft Environmental/Section 4(f) Statement (DEIS) on the project was filed with the Environmental Protection Agency (EPA) on 1 October 1979 in compliance with the National Environmental Policy Act of 1969 (Pub. L. 91–190).

The Draft Environmental/Section 4(f) Statement for the subject project is available for review at the U.S. Coast Guard, Third Coast Guard District Office, Building 135A, Governors Island, New York, NY 10004, Monday through Friday during working hours. The DEIS is available from and may be reviewed at the Delaware River Joint Toll Bridge Commission, Administration Building, Post Office Box 88, Morrisville, Pennsylvania. 19067.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge project, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (oan-br), Third Coast Guard District by 13 November 1979. Such notification should include the approximate time required to make the presentation. Comments previously submitted are a matter of record and need not be resubmitted at the hearing.

Speakers are encouraged to provide written copies of their oral statement to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or to the Commander (oan-br), Third Coast Guard District through 7 December 1979. A transcript of the hearing, as well as written comments received outside the hearing will be available for public review in the Coast Guard District Office approximately 45 days after the hearing.

All comments, oral and written, will be considered before a final determination is made on the subject bridge permit application by the Commandant, U.S. Coast Guard, Washington, D.C. 20590.

(Section 502, 60 Stat. 847, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C); 49 CFR 1.46(c)(10))

Dated: October 3, 1979.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 79-31469 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes October 30, 1979.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials

Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, D.C.

Application No.	Applicant	Renewal of exemption
3569-X	N. L. McCullough, Houston, Tex. [4]	3569
5022-X	United Technologies, Sunnyvale, Calif	5022
5022-X	The Boeing Co., Seattle, Wash	5022
5248-X	Lawrence Livermore Laboratory, Livermore, Calif	5248
5456-X	Fisher Scientific Co., Fair Lawn, N.J	5456
6232-X	McDonnell Douglas Corp., St. Louis, Mo	6232
6267-X	Georgia-Pacific Corp., Newport Beach, Calif	6267
6629-X	The Boeing Co., Seattle, Wash	6629
6691-X	Union Carbide Corp., Tarrytown, N.Y	6691
6802-X	Fitch Industrial & Welding Supply, Lawton, Okla	6802
6806-X	Analytical Instrument Development, Inc., Avondale, Pa	6806
6820-X	Georgia-Pacific Corp., Newport Beach, Calif	6820
7005-X	Bignier Schmid-Laurent, Paris, France [1]	7005
7060-X	Atlantic Air, Inc., Baltimore, Md	7060
7087-X	Unitek Corp., Monrovia, Calif.	7087
7205-X	Department of the Army, Washington, D.C	7205
7482-X	Monsanto Co., St. Louis, Mo.	7482
7536-X	Department of the Army, Washington, D.C	7536
7605-X	General Dynamics, Fort Worth, Tex	7605
7769-X	Brunswick Corp., Lincoln, NE [3]	7769
7938-X	Bignier Schmid-Laurent, Paris, France [4]	7938
7954-X	Air Products and Chemical, Inc., Allentown, Pa	7954
8012-X	Bignier Schmid-Laurent, Paris, France [5]	8012
8099-X	Union Carbide Corp., Bound Brook, N.J [6]	8099
8125-X	Fauvet Girel, Paris, France [7]	8125
8126-X	Fauvet Girel, Paris, France [8]	8126
8203-X	Pennwalt Corp., Philadelphia, Pa [9]	8203

[1] To authorize trailer-on-flat-car service for rail shipments.
[2] To renew and authorize shipment of explosive power devices, Class C explosives.
[3] To request deletion of the requirements for cylinders to "remain in one piece" following burst testing.
[4] To authorize trailer-on-flat-car service for rail shipment.
[5] To authorize trailer-on-flat-car service for rail shipments.
[6] To authorize an additional bag/box combination packaging for the shipment of poison B solids.
[7] To authorize rail as an additional mode of transportation.
[8] To authorize rail as an additional mode of transportation.
[9] To authorize rail as an additional mode of transportation.

Application No.	Applicant	Parties of exemption
6536-P	UGI Corp., Reading, Pa	6536
6898-P	Mallinckrodt, Inc., St. Louis, Mo	6898
6902-P	Great Lakes Chemical Corp., West Lafayette, Ind	6902
6984-P	Ireco Chemicals, Salt Lake City, Utah	6984
8012-P	Degussa Corp., Frankfurt, Germany	8012
8144-P	Atlas Powder Co., Dallas, Tex	8144
8189-P	Zoecon Industries, Dallas, Tex	8189
8222-P	Prochimie International, Inc., New York, N.Y	8222
8229-P	Lilly Ice & Bottling Works, Inc., Pemberton, W. Va	8229
8229-P	Dama Inc., Roanoke, Va	8229
8229-P	Apache Powder Co., Benson, Ariz	8229
8229-P	Stoneyhurst Quarries, Bethesda, Md	8229
8229-P	Coos Bay Supply Co., Coos Bay, Oreg	8229
8229-P	Pacific Powder, Pipe & Supply, Inc., Tenino, Wash	8229
8229-P	Southeastern Energy, Inc., Maryville, Tenn	8229
8229-P	Econex, Inc., Wheaton, Ill	8229
8229-P	Ireco Chemicals, Salt Lake City, Utah	8229
8229-P	Strawn Explosives, Inc., Dallas, Tex	8229
8229-P	Seco, Inc., Fort Smith, Ark	8229

This notice of receipt of applications for renewal of exemptions and for party to an exemption if published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 9, 1979.

H. J. Sonnenberg,

Acting Chief, Exemptions Branch, Office of Hazardous Materials, Regulation Materials Transportation Bureau.

[FR Doc. 79-31707 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulations of the Materials Transportation Bureau has received the applications described herein.

DATES: Comment period closes November 14, 1979.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 Seventh Street, S.W., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8282-N	Chevron Chemical Co., San Francisco, Calif	49 CFR 173.359	To authorize shipment of an organic phosphate compound mixture, liquid, Class B poison in a DOT Spec. 37P 5-gallon steel drum. (Modes 1, 2.)
8283-N	Allied Chemical Corp., Morristown, N.J	49 CFR 173.273(a)(4), 179.202-13.	To authorize shipment of sulfur trioxide, stabilized, in DOT Specification 111A60W2 tank cars equipped with standpipe electrical heaters. (Mode 2.)
8284-N	Allied Chemical Corp., Morristown, N.J	49 CFR 179.202-12(b)	To authorize shipment of oleum in DOT Specification 103AW or 111A100W2 tank cars equipped with safety valves instead of safety vents. (Mode 2.)
8285-N	Radian Corporation, Austin, Tex	49 CFR 100-199 with exception	To authorize shipment of limited quantities of flammable liquids and ORM-D materials essentially non-regulated when packaged in special type packaging. (Modes 1, 2, 3, 4, 5.)
8286-N	Union Carbide Corp., Tarrytown, N.Y	49 CFR 172.101, 173.315, 178.76(b).	To authorize shipment of liquid oxygen, nitrogen, and argon in specially designed cargo tanks. (Modes 1, 3.)
8287-N	Rohm & Haas Company, Philadelphia, Pa	49 CFR 173.245(a)(18), 173.245(a)(26), 178.35a(b), 178.19-4(c).	To authorize shipment of a corrosive liquid, in DOT Specification 6D/2SL or DOT Specification 34 equipped with a bung vent. (Modes 1, 2, 3.)
8288-N	Alaska Explosives Limited, Anchorage, Alaska	49 CFR 176.115(2)	To authorize stowage of Class A explosives in portable magazines aboard ship at less than the 25 foot separation distance required for explosives to crew quarters. (Mode 3.)

New Exemptions—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8289-N	Olin Corporation, East Alton, Ill	49 CFR 173.93	To authorize shipment of propellant explosives, solid, Class B, contained in metal cans, overpacked in a fiberboard box (ba-2321). (Mode 1.)
8290-N	Mobil Chemical Co., Richmond, Va	49 CFR 173.271	To authorize shipment of phosphorus trichloride in DOT Specification 51, phenolic lined, portable tanks. (Modes 1, 3.)
8291-N	Orion Research Inc., Cambridge, Mass	49 CFR 178.24a-5, 178.24a-6	To authorize shipment of monoethylamine, aqueous solution in 32 ounce linear polyethylene bottles complying with DOT Specification 2E except for testing and embossing. (Modes 1, 2, 3, 5.)
8292-N	Radian Corporation, Austin, Tex	49 CFR 100-199	To authorize shipment of limited quantities of various hazardous materials as non-regulation materials when packed in special type packaging. (Modes 1, 4.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued at Washington, D.C., on October 9, 1979.

H. J. Sonnenberg,

Acting Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-31708 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

1971-1974 and 1976-1978 Capris Imported by Ford Motor Co.; Public Proceeding Cancelled

The National Highway Traffic Safety Administration has cancelled the public proceeding announced in the Federal Register of September 13, 1979 (44 FR 53342) regarding its initial determination of safety-related defects in the reclining front seat backs in 1971-1974 Capri automobiles and the floor-mounted manual transmission gearshift levers on 1971-1974 and 1976-1978 Capris. The meeting was to be held at 10:00 a.m. on October 18, 1979, in Room 2230 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on October 12, 1979.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 79-31964 Filed 10-12-79; 11:47 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Manufacturers and Retailers Excise Taxes; Exemption From Tax on Production of Trucks and Production or Purchase of Tread Rubber

By virtue of the authority vested in me by section 4293 of the Internal Revenue Code of 1954, exemption is hereby authorized from the taxes imposed by sections 4061(a), 4071(a)(4), and 4218 of such Code with respect to the manufacture or production by the Department of Defense, for its own use, of taxable truck, bus, etc., bodies and chassis incorporating used components, and the purchase or production of tread rubber by such Department for recapping or retreading tires from shoulder to shoulder for its own use. The exemption applies only to the manufacture or production of such bodies and chassis and tread rubber in Department of Defense facilities, or purchases of tread rubber for the exclusive use of the Department in such facilities.

This exemption does not cover new taxable parts, to the extent of the tax imposed on such parts by section 4061(b) of the Code, purchased for incorporation in these vehicles. Therefore, such parts may not be purchased free of tax, or be eligible for credit or refund of tax, unless such parts are to be used in the manufacture or production of bodies or chassis that, without this authorization, are otherwise tax exempt or not taxable under section 4061(a).

Any existing assessments against the Department of Defense for the above taxes are hereby removed, but no refund or credit of taxes already paid will be allowed.

Dated: October 4, 1979.

Robert Carswell,

Acting Secretary of the Treasury.

[FR Doc. 79-31732 Filed 10-12-79; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

Water Circulating Pumps From the United Kingdom; Antidumping: Tentative Determination To Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative Revocation of Finding of Dumping.

SUMMARY: This notice is to advise the public that it appears that water circulating pumps of the wet motor type, suitable for residential and commercial hydronic heating systems, from the United Kingdom are no longer sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of the merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. The sole manufacturer has also given assurances that it is not now selling and does not intend to sell water circulating pumps from the United Kingdom to the United States at less than fair value. If this action is made final, the finding of dumping covering the subject merchandise from the United Kingdom will be revoked. Interested persons are invited to comment on this action.

EFFECTIVE DATE: October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Haley, Trade Analysis Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, (202-566-5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to water circulating pumps, wet motor type, suitable for use in residential and commercial hydronic heating systems, from the United Kingdom, was published as Treasury Decision 76-190 in the Federal Register of July 7, 1976 (41 FR 27843).

After due investigation, it has been determined tentatively that water circulating pumps from the United Kingdom are no longer being, nor are likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

Statement of Reasons on Which This Tentative Determination Is Based

The investigation indicated that, with the exception of certain sales for which dumping duties in a *de minimis* amount were assessed, all sales by the manufacturer since the date of the finding of dumping have been made at not less than fair value. A written assurance has also been received from the sole exporter stating that future sales of water circulating pumps to the United States will not be made at less than fair value.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the findings of dumping with regard to water circulating pumps, wet motor type, from the United Kingdom.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request, in writing, that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office no later than October 25, 1979. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office no later than November 14, 1979. All persons submitting views or arguments are reminded of the requirement to include nonconfidential summaries or approximated presentations of all confidential material.

This notice is published pursuant to section 153.44(c) of the Customs Regulations (19 C.F.R. 153.44(c)).

October 5, 1979.

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79-31729 Filed 10-12-79; 8:45 am]

BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

[Volume No. 31]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

Correction

In FR Doc. 79-28165, appearing at page 52936 in the issue of Tuesday, September 11, 1979, make the following change:

On page 52939, third column, last paragraph, the fourteenth line of the entry for MC-110988 (Sub-396F) should read "VA, and WV to points in IL, IN, IA, KY".

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. 175

MC 16903 (Sub-73TA), filed May 23, 1979. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN 47401. Represenative: Donald W. Smith, Suite 945-9000 Keystone Crossing, Indianapolis, IN 46240. *Road and street signs, posts, and brackets, and materials used in the manufacture of road and street signs,* between the facilities of Hall's Sign's, Inc., at or near Bloomington, IN on the one hand, and on the other, points in the U.S. in and east of ND, SD, NE, CO, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Hall Sign's, Inc. 3000 W. 3rd Street, Bloomington, IN 47401. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 61403 (Sub-270TA), filed July 19, 1979. Applicant: THE MASON AND DIXON TANK LINES, INC., Highway 11W, Kingsport, TN 37662. Represenative: Charles E. Cox (same address as applicant). *Chemicals, in bulk, in tank vehicles,* from Doe Run, KY, to points in NC, SC, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Olin Corporation, 120 Long Ridge Rd., Stamford, CT 06904. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 82063 (Sub-110TA), filed August 3, 1979. Applicant: KLIPSCH HAULING CO., 10795 Watson Rd., Sunset Hills, MO 63127. Representative: W. E. Klipsch (same address as above). *Liquid chemicals,* in bulk, in tank vehicles, from the plant sites of PPG Industries, Inc., at or near Lake Charles, LA, Beaumont and LaPorte, TX, to all points in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: P. E. Binder, TS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 95293 (Sub-1TA), filed July 12, 1979. Applicant: O'BOYLE TRANSFER COMPANY, INC., 1800 N. Western Ave., Chicago, IL 60647. Representative: Carl O. Minnberg (same address as applicant). *Household goods, antiques, artwork, pianos, organs, baggage, store and office fixtures,* from Chicago, IL and 50 miles to points in the following states: IL, IN, IA, MN, WI, NE, OH, AL, AZ, CA, CO, CT, DE, DC, FL, GA, ID, KS, KY, LA, MD, MA, MI, MO, NV, NJ, NM, NY, ND, OK, PA, RI, SC, SD, TN, TX, UT, VA, MS, WV, WY and between points in the above states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hanzel Galleries, Inc., 1120 S. MI Ave., Chicago, IL 60605. Send protests to: Annie Booker, TA, Rm.

1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 106603 (Sub-206TA), filed July 17, 1979. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW, P.O. Box 8099, Grand Rapids, MI 49508. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Asbestos Cement, pipe, couplings, fittings, and accessories* from the facilities of Certain-Teed Corporation at St. Louis, MO to all points in low peninsula of MI and to Ambler, PA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Certain-Teed Corporation, P.O. Box 1100, Blue Bell, PA 19422. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 106603 (Sub-207TA), filed July 12, 1979. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW, P.O. Box 8099, Grand Rapids, MI 49508. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Refractories and refractory products* from the facilities of North American Refractory Company, located at or near Vanport, PA to points in MI, IN, and IL. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North American Refractory Company, 600 Hanna Building, East 14th and Euclid Ave., Cleveland, OH 44115. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 107002 (Sub-558TA), filed July 27, 1979. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth (same address as applicant), *Jet fuel*, in bulk, in tank vehicles, from Montgomery, AL to Columbus AFB at or near Columbus, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): U.S. Army Legal Services Agency, Department of the Army (JALS-RL), Room 422, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041. Send protests to: Alan Tarrant, D/S, ICC, Federal Building, Suite 1441, 100 W. Capitol St., Jackson, MS 39201.

MC 107323 (Sub-57TA), filed July 27, 1979. Applicant: GILLILAND TRANSFER CO., 7180 West 48th Street, Fremont, MI 49412. Representative: Donald B. Levine, 39 South LaSalle Street, Chicago, IL 60603. *Glass containers, and equipment, supplies and accessories* used in the manufacture or distribution of glass containers; between Marion, IN and Burlington, WI on the one hand, and, on the other points in MI & IN. For 180 days. Supporting shipper(s): National Can Corporation, 8101 West Higgins Road, Chicago, IL 60631. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 107403 (Sub-1257), filed July 19, 1979. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Paint and paint products, in bulk, in tank vehicles* from Toledo, OH to Flint and Pontiac, MI; Louisville, KY for 180 days. Supporting shipper(s): E. I. DuPont De Nemours & Co., Inc., 1007 Market St., Wilm., DE 19898. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107403 (Sub-1258TA), filed July 25, 1979. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Muriatic acid*, in bulk, in tank vehicles from Fort Worth, TX to points in LA & OK for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stauffer Chemical Co., Nyala Farms Rd., Westport, CT 06880. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107403 (Sub-1259TA), filed July 2, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Poultry fats, in bulk, in tank vehicles*, from Natchitoches, LA to all pts. in the US, (except AK & HI), for 180 days. Supporting shipper(s): Country Pride Foods, L & D, 100 Mc Donald Rd, Many, LA 71449. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107403 (Sub-1260TA), filed July 29, 1979. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Fly ash, in bulk, in tank vehicles* (1) from: Trenton, NJ; Holtwood, PA & Montour County, PA to pts. in NJ, MD, VA, DE, NY, MA, RI, CT, WV, PA and (2) from: Montour County, PA to pts. in OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Admixtures Corp., 1835 Pennsylvania Ave., Hagerstown, MD 21740. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107912 (Sub-27TA), filed August 6, 1979. Applicant: REBEL MOTOR FREIGHT, INC., 3934 Homewood, Memphis, TN 38118. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Paper products* from the facilities of Georgia-Pacific Corporation at Crossett, AR to McCarty-Holman at Jackson, MS. Supporting shipper(s): McCarty-Holman Inc., 453 N. Mill St., P.O. Box 3409, Jackson, MS 39207. Send protests to: Floyd A. Johnson, 100 North Main, Suite 2006, Memphis, TN 38103.

MC 108393 (Sub-144TA), filed July 19, 1979. Applicant: SIGNAL DELIVERY SERVICE, INC., 201 E. Ogden Avenue, Hinsdale, IL 60521. Representative: Thomas B. Hill (same address as applicant). *Contract carrier:* irregular routes: *Electrical and gas appliances, parts of electrical and gas appliances, and equipment, materials and supplies used in the manufacture, distribution, and repair of electrical and gas applicances (except commodities in bulk)*, between Cullman, AL, on the one hand, and on the other, points in St. Joseph, MI; Clyde, Marion, Findley, OH; Danville, KY; and LaPorte, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Whirlpool Corporation, 2000 U.S. 33, North, Benton Harbor, MI 49022. Send protests to: Annie Booker, TA, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 114273 (Sub-645TA), filed July 27, 1979. Applicant: CRST, INC., 3930 16th Ave. S.W., Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as applicant). *Welding rods and equipment, supplies and accessories used therewith* from Hanover, PA to Gering, NE; Kansas City and St. Louis, MO; Denver, CO and points in IA and MN for 180 days. The purpose of this application is to substitute single-line service for existing joint-line service. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alloy Rods Division, Karen & Wilson Ave., Hanover, PA 17331. Send protests to: Herbert W. Allen, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 116763 (Sub-588TA), filed July 16, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira, North West St., Versailles, OH 45380. *(1) Frozen and canned foodstuffs, and (2) materials, supplies and equipment, used in the manufacture and distribution of foodstuffs* (except commodities in bulk, in tank vehicles), between the plantsite of Douglas Foods, Inc., Douglas, GA, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to traffic originating at the named origin and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Douglas Foods, Inc., P.O. Box 1208, Douglas, GA 31533. Send protests to: D/S ICC, 101 N. 7 St., Philadelphia, PA 19106.

MC 119583 (Sub-7TA), filed June 29, 1979. Applicant: L. E. BOLING, INC., 718 Commercial Street, Kewanee, IL 61443. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Carbonated mineral water in bottles,* from Milwaukee, WI to Kewanee, IL for 180 days. Supporting shipper(s): Boswell Distributing Co., 217 West Third Street, Kewanee, IL 61443. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 121453 (Sub-2TA), filed July 24, 1979. Applicant: J. L. ROTHROCK, INC., P.O. Box 1230, High Point, NC 27261. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave, NW, Washington, DC 20036. *General commodities (except those of unusual value, Classes A & B explosives commodities in bulk those requiring the use of special equipment, and household goods as defined by the Commission)* between Appomattox, VA, on the one hand, and, on the other, High Point and Greensboro, NC, restricted to traffice having a prior or subsequent movement by rail, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, NC 27360. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd—Rm CC516, Charlotte, NC 28205.

MC 123383 (Sub-90TA), filed July 11, 1979. Applicant: BOYLE BROTHERS, INC., RD 2, Box 3290, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 1832—2 World Trade Center, New York, NY 10048. (1) *gypsum, gypsum products and building materials, and* (2) *materials, equipment and supplies* used in or incidental to the manufacture, installation and distribution of the commodities in (1) above, between Buchanan, NY and Wilmington, DE on the one hand, and on the other, points in MI, OH and PA, for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 123993 (Sub-55TA), filed July 9, 1979. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, 801 Vaughn Bldg., Austin, TX 78701. *Dry pet food,* from the facilities of Sunshine Feed Mills, Inc. at Red Bay, AL and Tupelo, MS to points in AR, FL, GA, IL, LA, MS, MO, OK, SC, TN, TX, and VA. for 180 days. Supporting shipper(s): Sunshine Feed Mills, Inc., P.O. Drawer S., Red Bay, AL 35582. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave. New Orleans, LA 70113.

MC 124263 (Sub-3TA), filed July 18, 1979. Applicant: SUN MOTOR LINE, INC., P.O. Box 32546, Oklahoma, City, OK 73123. Representative: Jack H. Blanshan, Attorney at law; Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Frozen foodstuffs,* except in bulk, in vehicles equipped with mechanical refrigeration, from Atwater, Castroville, Modesto, Oxnard, Patterson, Salinas, San Jose, Santa Maria, and Watsonville, CA, to points in IL, IN, IA, KS, LA, MI, MO, NE, OH, OK, & TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): VIP Sales, 4673 S. 83rd East Avenue, Tulsa, OK 73123. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 124813 (Sub-214TA), filed July 11, 1979. Applicant: UMTHUN TRUCKING CO., 910 S. Jackson Street, Eagle Grove, IA 50533. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Interlocking paving stone* from St. Joseph, MN to points in IA and IL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Borgert Concrete Products, Inc., P.O. Box 39, St. Joseph, MN 56374. Send protests to: Herbert W. Allen, ICC 518 Federal Bldg., Des Moines, IA 50309.

MC 124813 (Sub-215TA), filed July 11, 1979. Applicant: UMTHUN TRUCKING CO., 910 S. Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Lumber* from Prairie du Chien, WI to points in Iowa for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Quality Wood Treating, Inc., Box 367, Prairie du Chien, WI. Send protests to: Herbert W. Allen, ICC, 518 Federal Bldg. Des Moines, IA.

MC 125433 (Sub-307TA), filed June 15, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Floor covering, floor tile and such commodities as are dealt in and used by manufacturers and wholesalers of household furnishings* (except commodities in bulk), between points in AZ, AR, CA, CO, IL, ID, IA, KS, LA, MS, MO, MT, NE, NV, NM, ND, OK, OR, PA, SD, TN, TX, UT, WA and WY, for 180 days. Supporting shipper(s): William Volker & Company, 945 California Drive, Burlingame, CA 94010. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-308TA), filed August 6, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). (1) *Such commodities as are dealt in by drug stores, discount houses, wholesale and retail grocery and food business houses,* and (2) *material and supplies used in the manufacture of commodities in* (1) above, from the facilities of Forest City Products, Inc., located at or near Clearfield, UT to points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Forest City Products, Inc., Bldg., C-12 Section 3, Clearfield, UT 84106. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-309TA), filed July 10, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). (1) *Garage door operators and parts, attachments and accessories therefor,* from Nogales, AZ to Alsip, Il and (2) *Material, equipment and supplies used in the manufacture of (1) above,* from Alsip, IL to Nogales, AZ. *Restriction:* Restricted to traffic originating at or destined to the facilities utilized by Chamberlain Manufacturing Corporation and further restricted against the transportation of commodities in bulk. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chamberlain Manufacturing Corporation, 845 Larch Avenue, Elmhurst, IL 60126. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-310TA), filed June 15, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Charcoal, charcoal briquets, hickory chips, charcoal lighter fluid, fireplace logs, compressed sawdust, activated carbon and related barbecue supplies,* except in bulk, from the facilities of Husky Industries located at or near Branson, MO; Pachuta, MS; Isanti, MN; Stamford, and Scotia, NY; Romeo and Ocala, FL; Gary, IN; Waubaca, WI and White City, OR to points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-311TA), filed July 2, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same

address as applicant). *Such commodities as are dealt in or used by agricultural equipment, industrial equipment and lawn and leisure products, manufacturers and dealers* (except commodities in bulk), between the facilities of International Harvester Company at Moline, East Moline and Rock Island, IL, on the one hand, and, on the other, points in NC, SC, GA, FL, AL, MS, LA, AR, VA, OK, TX, NM, AZ, CO, TN, WA, OR, CA, UT, WY, NV, MT and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Harvester, 401 North Michigan Avenue, 17th Floor, Chicago, IL 60611. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126243 (Sub-30TA), filed July 27, 1979. Applicant: ROBERTS TRUCKING CO., INC., P.O. Drawer G, Poteau, OK 74953. Representative: Vernon Roberts (same as applicant). *Plastic articles* and *such equipment, materials and supplies* as are used in the manufacture and distribution of the commodities (except commodities in bulk and those which because of size or weight require the use of special equipment), between the facilities of Fort Howard Paper Co. at or near Muskogee, OK on the one hand, and on the other points in AL, AR, CO, FL, GA, KS, KY, LA, MS, MO, NE, NM, NC, SC, TN, TX and VA, for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Fort Howard Paper Company, P.O. Box 130, Green Bay, WI 54305. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 126473 (Sub-40TA), filed July 20, 1979. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, 1501 E. Main, Ottumwa, IA 52501. *Edible and inedible fats, animal oils, and products and blends of animal fats and oils transported in bulk* from the facilities of Geo. A. Hormel & Co. at Davenport, IA, to points in IL, MN, MO, NE, SD, and WI for 180 days. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: Herbert W. Allen, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 133233 (Sub-65TA), filed July 9, 1979. Applicant: CLARENCE L. WERNER d.b.a. WERNER ENTERPRISES, P.O. Box 37308, I-80 & Hwy. 50, Omaha, NE 68137. Representative: J. F. Crosby, P.O. Box 37205, I-80 & Hwy. 50, Omaha, NE 68137. *Aluminum cable and accessories necessary for installation of aluminum cable* from the plantsite of Aluminum Company of America at or near Scottsville, TX to points in CA, IL, KS, MN, MO, NE, ND and SD under a continuing contract with the Aluminum Company of America for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 135283 (Sub-57TA), filed July 27, 1979. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, Grand Island, NE 68801. Representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, 521 S. 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from the facilities of Spencer Foods, Inc. at or near Spencer, IA to points in KS for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68611. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 135283 (Sub-58TA), filed July 11, 1979. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., 432 S. Stuhr Road, P.O. Box 2122, Grand Island, NE 68801. Representative: Lavern R. Holdeman, 521 S. 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from the facilities of Spencer Foods, Inc. at or near Schuyler, NE to points in IL and IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68611. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136343 (Sub-180TA), filed May 21, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Foodstuffs*, from Quakertown, PA to West Haven and Grande, CT; Wilmington and Newark, DE; Cranston, RI; Boston, MA; Edison and East Hanover, NJ; Albany and Saratoga Springs, NY; Atlanta and Union City, GA; Chicago, IL; Detroit, MI; Cleveland and Cincinnati, OH; Hickory and Charlotte, NC; and Nashville, TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crouthamel Potato Chip Co., Inc., P.O. Box 818, Quakertown, PA 18951. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 136343 (Sub-181TA), filed June 28, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Lighting Fixtures and lamps, and materials, equipment, and supplies used in the manufacture and sale of Lighting Fixtures and lamps (except commodities in bulk)*, between East Brunswich and Finderne, NJ on the one hand, and on the other, Alexandria and Roanoke, VA; Charlotte, NC; Greenville, SC; Atlanta, GA; Bedford Heights and Columbus, OH; Grand Rapids, MI; Indianapolis, IN; Memphis and Nashville, TN; and Boston, MA, and points in the commercial zones of the aforementioned cities for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Action Tungsram, Inc., 11 Elkins Rd., East Brunswich, NJ 08816. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 136553 (Sub-83TA), filed July 12, 1979. Applicant: ART PAPE TRANSFER, 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Lime and limestone products, in bulk*, from the facilities of Linwood Stone Products Company, Inc., at or near Davenport, IA to points in Minnesota and Wisconsin for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Martrex, Inc., 7701 Arboretum Blvd., Chanhassen, MN 55317. Send protests to: Herbert W. Allen, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 136553 (Sub-84TA), filed July 2, 1979. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th St., Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center Des Moines, IA 50309. *Brass and aluminum castings* from Dubuque, IA, to Broadview, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Morrison Bros. Company, 24th and Elm, Dubuque, IA 52001. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 136803 (Sub-11TA), filed July 24, 1979. Applicant: SIOUX CITY BULK FEED SERVICE, INC., 3324 Highway 75 North, Sioux City, IA 51105.

Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Meat scraps* from the facilities of Iowa Beef Processors, Inc. at or near Luverne, MN to points in SD for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 140193 (Sub-7TA), filed July 31, 1979. Applicant: RICH GRANT, INC., 910 West 24th Street, Ogden, UT 84401. Representative: Miss Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. CONTRACT CARRIER: IRREGULAR ROUTE: *Meats, meat products, meat by-products and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides, inedible tallow, and commodities in bulk) from MN and IA to UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Country Pride Foods, 501 North 2200 West, Salt Lake City, UT. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84128.

MC 140563 (Sub-41TA), filed July 17, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Mineral wool (fiberglass), insulation products, except in bulk,* from the facilities of CertainTeed Corp. at or near Athens, Atlanta and Chamblee, GA to points in AL, FL, KY, LA, MS, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm 300, Atlanta, GA 30309.

MC 140563 (Sub-42TA), filed July 19, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) *Malt beverages and related advertising materials (except in bulk)* from the facilities of Miller Brewing Company at or near Albany, GA to points in the U.S. in and east of WI, IL, MO, OK and TX (except points in CT, ME, MA, NH, RI and VT) and (2) *Materials, equipment and supplies used in the manufacture, sale or distribution of malt beverages (except commodities in bulk)* from points in the U.S. in and east of WI, IL, MO, OK and TX (except points in CT, ME, MA, NH, RI and VT) to the facilities of Miller Brewing Company at or near Albany, GA for 180 days. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Blvd., Milwaukee, WI 53208. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, RM 300, Atlanta, GA 30309.

MC 140563 (Sub-43TA), filed July 29, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Paper and paper products* from the facilities of Union Camp Corp. at or near Savannah, GA to points in LA, TX, OK and AR for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

MC 140643 (Sub-3TA), filed July 20, 1979. Applicant: HOWARD N. CHILD, dba EIGHT BALL LINE TRUCKING, 2717 Goodrick Avenue, Richmond, CA 94804. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518. *Contract carrier,* irregular routes: *Mineral wool; fibrous glass products and materials; mineral wool products and materials; insulated air ducts; insulating products and materials; glass fibre rovings, yarn and strands; glass fibre mats and mattings; flexible air duct and materials, equipment and supplies used in the manufacture of commodities named,* except in bulk, from Chowchilla, CA to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482. Send protests to: A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 141443 (Sub-36TA), filed July 17, 1979. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: William Cruikshank (same address as applicant). *Furniture parts and materials and supplies used in the manufacture and distribution thereof,* (except commodities in bulk), (1) from or near Hominy, OK, to Denver, CO; (2) from or near Carthage, MO, to Denver, CO, Portland, OR, Los Angeles, CA, and Glendale, AZ; (3) from or near Little Rock, AR, to Dallas and Ennis, TX; (4) from or near Dallas and Ennis, TX, to Los Angeles, CA; (5) from or near Los Angeles, CA, to Portland, OR and Seattle, WA; and (6) from or near Magnolia, AR, to Glendale, AZ, and Los Angeles, CA, restricted to traffic originating at or destined to the facilities of Legget & Platt, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Leggett & Platt Incorporated, P.O. Box 757, Carthage, MO 64836. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 141773 (Sub-12TA), filed May 8, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945—9000 Keystone Crossing, Indianapolis, IN 46240. *Contract carrier: irregular routes: Iron and steel and iron and steel articles,* from Indianapolis, IN; Youngstown, OH; Aliquippa, PA and Franklin Park, IL to the plantsite and facilities of Carlton Company, Inc. at Portland, OR, for 180 days. Under contract with Carlton Company, Inc. at Portland, OR. Restricted to movement in mechanical temperature controlled equipment. Supporting shipper(s): Carlton Company, Inc., 3901 Southeast Naef Road, Portland, OR 97222. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 142062 (Sub-32TA), filed April 10, 1979. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. *Contract carrier: Irregular routes: Furniture parts, and materials, equipment and supplies used in the manufacture and distribution of furniture parts,* (except commodities in bulk), from the facilities of Leggett and Platt Incorporated at or near Carthage and Springfield, MO, to the facilities of Leggett and Platt Incorporated at Winchester, KY; and Mason, OH, for 180 days. Under contract with Leggett and Platt Incorporated at Carthage, MO. Supporting shipper: Leggett and Platt Incorporated, 18th Road, Carthage, MO 64836. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 142513 (Sub-8TA), filed July 11, 1979. Applicant: BIRK TRANSFER, INC., 360 Wheatland Avenue, Conemaugh, PA 15909. Representative: William A. Gray, Esquire, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Lumber, from points in NC and SC to points in PA, for 180 days. An underlying ETA for 90 days has been sought. Supporting shipper(s): East Coast Lumber Co., P.O. Box 1811,

Asheboro, NC 27203. Send protests to: J. J. England, D/S, I.C.C., 2111 Federal Building, Pittsburgh, PA 15222.

MC 144303 (Sub-10TA), filed July 5, 1979. Applicant: YOUNGBLOOD TRUCK LINES, INC., U.S. Highway 25S, Fletcher, NC 28732. Representative: H. Charles Ephraim, 1250 Connecticut Ave. NW., Washington, DC 20036. *Contract* carrier-irregular routes; *(1) Electrical equipment and parts, and (2) materials and supplies used in the manufacture and distribution of electrical equipment and parts, (except commodities in bulk, those requiring special equipment, and aerospace craft parts,)* between the facilities of General Electric Company at or near East Flat Rock and Fletcher, NC on the one hand, and, on the other, points in the US (except AK and HI, and those points on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the MN–IA State line, then along the MN–IA State line to its junction with the MN–SD State line, then north along the MN–SD State line to the International Boundary line between the US and Canada), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Electric Co., P.O. Box 865, Hendersonville, NC 28739. Send protests to: Terrell Price, 800 Briar Creek, Rd., Rm. CC516, Charlotte, NC 28205.

MC 144503 (Sub-20TA), filed July 2, 1979. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *Meats, meat products and meat by-products* from the facilities of Swift & Company at Marshalltown, Sioux City and Glenwood, IA to AL, FL, GA, LA, MS, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

MC 144513 (Sub-13TA), filed June 25, 1979. Applicant: CONDOR CONTRACT CARRIERS, INC., 656 Wooster St., Lodi, OH 44254. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Hardwood flooring, and accessories and installation materials therefor,* from Center, TX and Nashville, TN and points in their commercial zones, to the facilities of Butler-Johnson Corp. at or near San Jose, Sacramento and Fresno, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Butler-Johnson Corp., 1480 Nicora Ave., San Jose, CA 95133. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 144713 (Sub-8TA), filed June 25, 1979. Applicant: HAULMARK TRANSFER, INC., 1100 N. Macon St., Baltimore, MD 21205. Representative: Glen M. Heagerty (same address as applicant). Contract carrier, irregular routes, *such merchandise as is dealt in by a magazine publisher and distributor* (except in bulk), from Detroit, MI to points in the States on and East of the Mississippi River and KS and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Look Magazine, Inc., 150 E. 58th St., New York, NY 10022. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadephia, PA 19106.

MC 144883 (Sub-5TA), filed July 13, 1979. Applicant: EARL MOORE, d.b.a. S & M MARKETING, P.O. Box 4020, Foster City, CA 94404. Representative: J. T. Proctor, P.O. Box 668, Mountain View, CA 94042. *Bananas in Refrigerated Trailers,* from Wilmington and Long Beach, CA to all points in AZ, CA, CO, ID, MO, NV, NM, OR, TX, UT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chiquita Brands, Inc., Berth 147, Neptune Ave., Wilmington, CA 90744; Castle & Cooke Foods, 25401 Cabot Rd. #212, Laguna Hills, CA. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94104.

MC 145152 (Sub-102TA), filed July 31, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Dry animal food* (in bags on pallets), from Red Bay, AL and Tupelo, MS to points in the U.S. (except AK, AL, CA, CO, HI, ID, MN, MS, MT, ND, NE, NM, NV, OR, SD, TN, UT, WA and WY) restricted to the transportation of traffic originating at the facilities of Sunshine Mills, Inc. at or near Red Bay, AL and Tupelo, MS, for 180 days. Supporting shipper(s): Sunshine Mills, Inc., P.O. Drawer S, Red Bay, AL 35582. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 145513 (Sub-8TA), filed July 25, 1979. Applicant: SERVICE TRANSPORTATION, INC., 125 North 6th St. (P.O. Box 732), Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. (1) *Canned and bottled foodstuffs,* from the facilities of Keller-Lorenz, Inc., d/b/a/ Payette Vinegar & Cider at or near Fruitland, ID to points in ID, OR, WA, MT, UT, CO, NV and AZ, under a continuing contract or contracts with Keller-Lorenz, Inc., d/b/a/ Payette Vinegar & Cider; (2) *Materials and supplies used in the manufacture and distribution of canned and bottled foodstuffs,* from points in CA, ID, OR, WA, MT, UT, CO, NV, and AZ to the facilities of Keller-Lorenz, Inc., d/b/a Payette Vinegar & Cider at or near Fruitland, ID, under a continuing contract or contracts with Keller-Lorenz, Inc., d/b/a Payette Vinegar & Cider, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keller-Lorenz, Inc., d/b/a Payette Vinegar & Cider, P.O. Box 528, Fruitland, ID 83619. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 146293 (Sub-30TA), filed June 25, 1979. Applicant: REGAL TRUCKING COMPANY, INC., 95 Lawrenceville Industrial Park Circle NE., Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *Paper and paper products and materials, equipment and supplies utilized in the manufacture thereof (except commodities in bulk)* from the plantsite of International Paper Co. at or near Jay, ME to points in the states of NC, VA, GA, and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Paper Company, 220 E. 42nd St., New York, NY 10017. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 147013 (Sub-3TA), filed July 30, 1979. Applicant: RDL, INC., P.O. Box 286, Gambrills, MD 21054. Representative: Chester A. Zyblut, 1030—15th St. NW., Washington, D.C. 20005. *Candy or confectionery* from the facilities of M&M Mars Co., Hackettstown, NJ, Chicago, IL, Elizabethtown, PA, Cockeysville, MD and Waco, TX to points in NJ, IL, PA, MD and TX, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): Ken Dunbar, Traffic Manager, M&M Mars Co., Div. of Mars Co., High Street, Hackettstown, NJ 07840. Send protests to: ICC, 101 N. 7th St., Philadelphia, PA 19106.

MC 147033 (Sub-2TA), filed July 30, 1979. Applicant: STORY, INC., Route #1, Box 122, Henager, AL 35978. Representative: George M. Boles, Attorney-at-Law, Carlton, Boles, Clark, Stichweh & Caddis, 727 Frank Nelson Building, Birmingham, AL 35203. *Contract, irregular: Such commodities as are dealt in or used by wholesale and retail grocery houses, drugstores and variety stores,* between the facilities of Peyton's Southeastern, Inc., at or near Cleveland, TN, on the one hand, and, on the other, points in MI, for 180 days. Supporting shipper(s): Peyton's

Southeastern, Inc., 1500 Sanita Avenue, Louisville, KY 40232. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Bldg., Birmingham, AL 35203.

Note.—The application involves dual operations inasmuch as applicant holds temporary authority as a common carrier in MC 144190 Sub-1TA to transport carpet from northwest GA to the far West.

MC 147122 (Sub-1TA), filed May 8, 1979. Applicant: SCOTHOLM TRANSPORTATION CORP., P.O. Box 487, 5950 Fisher Rd., East Syracuse, NY 13057. Representative: Martin Werner, 888 Seventh Ave., New York, NY 10019. *Frozen foodstuffs and commodities exempt from regulation under 49 U.S.C. 10526(a)(6) (formerly Section 203(b) of the Interstate Commerce Act) in mixed loads with frozen foodstuffs,* between the facilities of Empire Freezers of Syracuse, Inc., in Syracuse, NY, on the one hand, and, on the other, points in MA, CT, RI, ME, NH, VT, PA, NJ, NY, OH, MI, DE, MD, VA, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Empire Freezers of Syracuse, Inc., P.O. Box 4892 (Farrell Rd.), Syracuse, NY 13221. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 147423 (Sub-2TA), filed July 5, 1979. Applicant: BOND TRANSFER, INC., 1831 Mills Ave., El Paso, TX 79997. Representative: Kenneth R. Hoffman, 807 Brazos, Suite 801, Austin, TX 78701. (1) *Electronic equipment and devices and parts and sub-assemblies for electronic equipment and devices;* and (2) *materials, equipment and supplies used in the manufacture, sale or distribution of the commodities in (1) above,* between Colorado Springs, CO, and points in its commercial zone, on the one hand, and, on the other, points in El Paso, TX, and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Electro-Mech Co., 707 Hathaway Drive, Colorado Springs, CO 80915. Ampex Corporation, 600 Wooten Rd., Colorado Springs, CO 80915. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27, Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 147553 (Sub-1TA), filed July 18, 1979. Applicant: DENNIS MOSS AND GARY MOSS, d.b.a. MOTOR WEST, P.O. Box 1405, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Packaged oil,* from Ponca City, OK to Caldwell, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Franklin Oil Co., 1515 Chicago, Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 147703 (Sub-1TA), filed July 30, 1979. Applicant: J. A. AUGER, INC., P.O. Box 343, Farmerville, LA 71241. Representative: J. A. Auger (same as applicant). *Wood residuals, chips, shavings, sawdust, wood waste* from Farmerville, LA to Crossett, AR for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Georgia-Pacific Corporation, P.O. Box 520, Crossett, AR 71635. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 147843 (Sub-1TA), filed July 27, 1979. Applicant: ROY L. JOHNSON, d.b.a. Little Egypt Trucking Co., Box 13, RR #5, Marion, IL 62959. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract carrier;* irregular routes: Fiber automotive assembly materials and products, resinated cotton products, and materials, equipment and supplies used in the manufacture of the foregoing commodities between points in IL, IN and MO for 180 days, for the account of Allen Industries, Inc., a Subsidiary of Dayco Corporation. Applicant has filed an underlying ETA seeking 90 days authority. Supporting shipper(s): Allen Industries, Inc., a Subsidiary of Dayco Corporation, 333 West First Street, Dayton, OH 45401. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

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MC 21866 (Sub-130TA), filed August 2, 1979. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. *Cleaning compounds, disinfectants, drain cleaner, air freshner, paint, varnish, wax, animal food supplements, insecticides, paper towels, toilet tissues, paper towel dispensers and materials and supplies used in the manufacture and distribution of the above named commodities* (except commodities in bulk), from Kansas City, MO and Tenafly, NJ to Phila., PA, Cleveland, OH, Atlanta, GA, Chicago, IL, and Dallas, TX; and from Chicago, IL to Phila., PA, Atlanta, GA and Cleveland, OH, for 180 days. Restriction: The service authorized herein is restricted to traffic originating at or destined to the facilities of West Chemical Products, Inc., or its subsidiaries. An underlying ETA seeks 90 days authority. Supporting shipper(s): West Chemical Products, Inc., 42-16 West St., Long Island City, NY 11101. Send protests to: I.C.C. Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 26396 (Sub-284TA), filed August 27, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59101. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Panels or boards, wall or roof, combined with insulation, urethane foam between gypsum board and foil or felt,* from Salt Lake City, UT to the ports of entry on the International Boundary line between the U.S. and Canada located in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Panelera Corporation, 1857 South 3850 West, Salt Lake City, UT 84104. Send protests to: Paul J. Labane, DS, ICC., 2602 First Avenue North, Billings, MT 59101.

MC 26396 (Sub-285TA), filed August 27, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Agricultural chemicals* from Lafayette, IN and Brownsville, TX to the International Boundary line between the U.S. and Canada located in MT, for 180 days. Supporting shipper(s): Eli Lilly Inter-America, Inc., P.O. Box 32, Indianapolis, IN 46296. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 26396 (Sub-286TA), filed August 15, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Drywall tape* from Kansas City, KS to ports of entry on the U.S.-Canada International Boundary line located in MT, for 180 days. Supporting Shipper(s): Marvelite Industries, Ltd., 3304-58th Avenue SE, Calgary, AB, Canada T2C OB3. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 29886 (Sub-368TA), filed August 8, 1979. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 39th Ave., Kenosha, WI 53142. Representative: Albert Barber (same address as applicant). *Trucks,* in initial movements, in driveaway service, from Allentown, PA to all points in the U.S., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mack Trucks, Inc., 2100 Mack Blvd., Allentown, PA 18105. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 30067 (Sub-14TA), filed August 20, 1979. Applicant: SOUTH BRANCH MOTOR FREIGHT, INC., P.O.B. 576, Petersburg, WV 26847. Representative: J. G. Dail, Jr., P.O.B. LL, McLean, VA 22101. *Poles, posts, piling, lumber, cross ties, and mine ties,* from facilities of Koppers Co., Inc. at or near Green Spring, WV to points in NJ, NY, OH, PA, for 180 days. Supporting Shipper(s): Koppers Co., Inc., 850 Koppers Bldg., Pittsburgh, PA 15219. Send protests to: I.C.C. Fed. res. Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 30837 (Sub-489TA), filed August 20, 1979. Applicant: KENOSHA AUTO TRANSPORT CORP. 4314 39th Ave., Kenosha, WI 53142. Representative: Paul Sullivan 711 Washington Bldg., NW, Washington, DC 20005. *New motor vehicles,* in initial and secondary movements, in truckaway service, from Cortland, NY to all points in the U.S., except AK & HI, restricted to traffic originating from the facilities of Solargen Electronics, Ltd., Cortland, NY and its subsidiary, Solargen electric Motor Car Corp., Cortland, NY, for 180 days. Supporting Shipper(s): Solargen Electric Motor Car Corp., 174 Central Ave., Cortland, NY 13045. Send protests to: Gail Daugherty, TA, ICC 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 32166 (Sub-15TA), filed Aug. 20, 1979. Applicant: BRONAUGH MOTOR EXPRESS, INC., 1025 Nandino Blvd., Lexington, Ky. 40511. Representative: John W. Bronaugh, President (same as above). Artificial trees, wreaths, garlands, and shrubbery, between Lexington, KY. and its commerical zone, and Knoxville, TN, and its commercial zone, serving no intermediate points, from Lexington, KY, over Interstate Hwy. 75 to Knoxville, TN, and return over same route. Applicant intends to interline with other carriers at Knoxville, TN, Nashville, TN, Louisville, KY and Cincinnati, OH. Supporting Shipper(s): James L. Sullivan, Jr., American Tree & Wreath, Inc., 1454 Jingle Bell Lane, Lexington, Ky. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, Ky. 40202.

MC 36556 (Sub-43TA), filed August 16, 1979. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, Somers, WI 53171. Representative: Howard E. Blackmon (same as applicant). *Canned or prepared foodstuffs, except in bulk, in tank vehicles* from the facilities of California Canners and Growers, at Brownsville, WI to points in IL (except Boone, Cook, DuPage, Kane, Lake, McHenry & Winnebago Counties), IL, MI, OH, Louisville, KY & St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): California Canners & Growers P.O. Box 1237 Fond du Lac, WI 54935. Send protests to: John E. Ryden, DS, ICC 517 E. Wisconsin Ave., Rm 619 Milwaukee, WI 53202.

MC 37896 (Sub-33TA), filed August 1, 1979. Applicant: YOUNGBLOOD TRUCK LINES, INC., U.S. Hwy 258, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036. *(1) empty cans and can ends, and (2) pallets, materials and supplies used in the manufacture or distribution of the commodities in (1) above,* between Arden and Flectcher, NC, on the one hand, and, on the other, points in NY, VA, WV, SC, GA, AL, MS, LA, and MI, restricted to traffic orginating at or destined to the facilities of and warehouses used by Gerber Containers, Division of Gerber Products Company for 180 days. An underlying ETA seeks 90 days of authority. Supporting Shipper(s): Gerber Containers, Division of Gerber Products Co., P.O. Box 367, Arden, NC 28704.Send protests to: Terrell Price, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 42146 (Sub-24TA), filed August 21, 1979. Applicant: A. G. BOONE COMPANY, P.O. Box 668126, Charlotte, NC 28266. Representative: Floyd C. Hartsell (same as applicant). *Contract* carrier-Irregular routes; *Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business for the account of The Kroger Company, over irregular routes* between points and places within the boundary lines of the states of NC, SC, GA, VA, TN, KY, WV, IN, MO, IL, MI, MS, AR, LA, AL, FL, PA, MD, DE, NJ, NY, OH, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Kroger Company, 1014 Vine St., Cincinnati, OH 45201. Send protests to: Sheila Reece, TA, 800 Briar Creek Rd–Rm CC516, Charlotte, NC 28205.

MC 42487 (Sub-937TA), filed July 23, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Common carrier; regular routes: *General commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Fort Smith, AR and Joplin, MO, serving the intermediate points of Fayetteville, Springdale, Rogers, Bentonville, and the off-route point of Siloam Springs; from Fort Smith over U.S. Hwy 71 to Joplin and return over the same route; between Memphis, TN and Fort Smith, AR, serving the intermediate points of Forrest City, Brinkley, Lonoke, Little Rock, North Little Rock, Conway, Russellville and Clarksville, AR; from Memphis over U.S. Hwy 70 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Fort Smith, and return over the same route; between Houston, TX and St. Louis, MO, serving the intermediate points of Malvern, Benton, Little Rock, North Little Rock, Jacksonville, Cabot and Bald Knob, Walnut Ridge and the off-route points of Lake Catherine, Magnet, Hot Springs, Jonesville, Beauxite, Bryant, Beebe, Searcy, Heber Springs, and Piggot, AR; also serving Jones Mills plant site in connection with carrier's regular route operations; from Houston over U.S. Hwy 59 to junction U.S. Hwy 67 at Texarkana, AR, then over U.S. Hwy 67 to St. Louis, MO and return over the same route; between Memphis, TN and Bald Knob, AR, serving the intermediate points of Earle, Wynne, McCrory and Augusta, AR; From Memphis over Interstate Hwy 55 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Bald Knob and return over the same route. Between Little Rock, AR and Springfield, MO, serving the intermediate points of Harrison and Conway, AR; From Little Rock over U.S. Hwy 65 to Springfield and return over the same route. Between Memphis, and Springfield, MO serving the intermediate points of Marked Tree, Jonesboro, Walnut Ridge, Trumann and the off-route point of Paragould, AR; From Memphis over Interstate Hwy 55 to junction U.S. Hwy 63 near Gillmore, AR, then over U.S. Hwy 63 to junction U.S. Hwy 60 near Willowsprings, MO then over U.S. Hwy 60 to junction U.S. Hwy 160 at Springfield, MO, then over U.S. Hwy 160 to junction U.S. Hwy 13 at Springfield, MO, and return over the same route. Between Memphis, TN and Springdale, AR, serving the intermediate points of Mountain Home, Gassville, Flippin and Yellville, and Harrison, AR and serving Gateway and Hardy, AR and the junction U.S. Hwy 167 and U.S. Hwy 62 at Ash Flat, AR for purpose of joinder only; From Memphis over Interstate Hwy 55 to junction U.S. Hwy 63 near Fillmore, AR, then over U.S. Hwy 63 to junction U.S. Hwy 62 near Hardy, AR, then over U.S. Hwy 62 to Springdale, AR, and return over the

same route. Applicant seeks authority to serve Osceola, AR and Blytheville, AR as intermediate points in connection with carrier's presently authorized regular route. Applicant seeks to serve all points in the Commercial Zone of points of authority authorized herein, for 180 days. Applicant intends to tack the proposed authority with present service authority found in Docket MC 42487 Sub 708 at Fort Smith, AR, Memphis, TN, Springfield, MO and Joplin, MO. Tacking will also take place at New Orleans, LA with authority in Docket No. MC 42487 Sub 885. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): There are in excess of 100 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future.

MC 42487 (Sub-940TA). Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Common carrier; regular routes: *General commodities* (except commodities in bulk and household goods as defined by the Commission), serving Olympia, WA as an intermediate point in connection with carrier's presently authorized regular route operations between Seattle, WA and Medford, OR. Applicant seeks to serve all points in the Olympia, WA commercial zone, for 180 days. Applicant intends to tack with present authorities as outlined on page 2 of application; applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the U.S. as provided in Tariffs on file with the Commission. Supporting shipper(s): There are 15 statements in support attached to this application which may be examined at the I.C.C. in Washington, DC or copies of which may be examined in the field office named below. Send protests to: D/S Neil C. Foster, Suite 500, 211 Main, San Francisco, CA 94105.

MC 42487 (Sub-941TA), filed September 5, 1979. Applicant: CONSOLIDATED FREIGHTWAY, a corporation of Delaware, 175 Linfield, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 306, Portland, OR 97208. Common carrier; regular route. *General commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment. Between Baton Rouge, LA and Iowa, LA, serving the intermediate points of Lafayette, Rayne and Crowley, LA; From Baton Rouge over Interstate Hwy 10 to Lafayette, LA, then over U.S. Hwy 90 to Iowa, and return over the same route; Between Lafayette, LA and New Iberia, LA serving all intermediate points: From Lafayette over U.S. Hwy 90 to New Iberia, and return over the same route; From Lafayette over LA Hwy 182 to New Iberia, and return over the same route; Between New Iberia, LA and Kaplan, LA, serving the intermediate point of Abbeville, LA and serving the junction LA Hwy 14 and LA Hwy 89 for purpose of joinder only; From New Iberia over LA Hwy 14 to Kaplan, and return over the same route; Between Crowley, LA and Kaplan, LA, serving no intermediate points; From Crowley over LA Hwy 13 to junction LA Hwy 14, then over LA Hwy 14 to Kaplan, and return over the same route; Between Lafayette, LA and Abbeville, LA, serving all intermediate points; From Lafayette over U.S. Hwy 167 to Abbeville, and return over the same route; Between Maurice, LA and the junction U.S. Hwy 90 and LA Hwy 92, serving the intermediate points of Milton and Youngsville, LA; From Maurice over LA Hwy 92 to junction U.S. Hwy 90 and LA Hwy 92 and return over the same route; Between the junction LA Hwy 182 and LA Hwy 89 and the junction LA Hwy 14 and LA Hwy 89, serving the intermediate point of Youngsville, LA; From the junction LA Hwy 182 and LA Hwy 89 over LA Hwy 89 to the junction LA Hwy 14 and LA Hwy 89, and return over the same route; Serving St. Martinville, LA and Breaux Bridge, LA as off-route points in connection with routes described above, for 180 days. Applicant seeks to serve all points in the Commercial Zones of points of service authorized above. Applicant intends to tack the proposed authority at common points. Applicant also intends to tack the proposed authority with present authority at Baton Rouge, LA and Iowa, LA. Authority to serve Baton Rouge, LA and Iowa, LA is found in Docket No. MC 42487 Sub 885. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the ICC. Supporting shipper(s): There are 84 statements in support attached to this application which may be examined at the I.C.C. in Washington, DC, or copies of which may be examined at the ICC in the field office named below. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any other authority it may obtain in the future.

MC 43706 (Sub-9TA), filed August 9, 1979. Applicant: ATKINSON FREIGHT LINES, INC., P.O.B 520—Blanche Rd., Cornwells Heights, PA 19020. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Containers and container closures,* from the facilities of The Continental Group, Inc. at or near Perry and Atlanta, GA to St. Louis, MO; Quincy, IL; Columbus and Worthington, OH; Indianapolis, IN; St. Joseph, Benton Harbor, Shoreham and Holland, MI, for 180 days. Supporting shipper(s): The Continental Group, Inc., 5401 W. 65th St., Chicago, IL 60638. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 49567 (Sub-12TA), filed August 14, 1979. Applicant: GOLDEN BROS., INC., 234 East McClure Street, Kewanee, IL 61443. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *Contract carrier:* irregular routes: *Earth Moving Machines,* from the facilities of Kress Corp. at or near Brimfield, IL to points in AL, AZ, AR, CA, CO, DE, IN, IA, KY, LA, MD, MI, MN, MO, NE, NV, NJ, NM, NY, ND, OH, OK, PA, TN, TX, UT, VA, WV, WI & WY for 180 days for the account of Kress Corp., Brimfield, IL. Supporting shipper(s): Kress Corp., Brimfield, IL. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Chicago, IL 60604.

MC 51146 (Sub-740TA), filed August 20, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin, (same address as applicant). *Plastic tubes* from facilities of American Can Co. at Shelbyville, TN to Iowa City, IA and Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Can Co., 915 Harger, Oak Brook, IL 60521. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-741TA), filed August 22, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin, (same address as

applicant). *Such commodities as are manufactured and/or distributed by the Eastman Kodak Co.* between the facilities of the Eastman Kodak Co. at Rochester, NY and the facilities of the Eastman Kodak Co. at Oak Brook, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Eastman Kodak Co., 2400 Mount Read Blvd., Rochester, NY 14650. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-742TA), filed August 22, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin, (same address as applicant). *Appliances* from facilities of Frigidaire Corp. at Columbus, OH to facilities of Morley Murphy Co. at Milwaukee & Green Bay, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Morley Murphy Co., 700 Morley Rd., Green Bay, WI 54303. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-743TA), filed August 27, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Such commodities as are dealt in or used by manufacturers of porcelain products* from Robbins, NC; Gleason, TN; Monticello, GA; Wedron, IL; Zanesville, OH; Custer, SD & Edgar, FL to Sun Prairie, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wisconsin Porcelain Co., 120 Lincoln St., Sun Prairie, WI 53590. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-744TA), filed August 28, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Confectionery* from Hackettstown, NJ & Elizabethtown, PA to points in IL, MI, MN & OH, restricted to traffic originating at facilities of M&M/Mars, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): M&M/Mars, Div. of Mars, Inc., High St., Hackettstown, NJ 07840. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 52437 (Sub-7TA), filed August 20, 1979. Applicant: SHIPPERS SERVICE EXPRESS, INC., 7200 Fly Road, PO Box 207, E. Syracuse, NY 13057. Representative: Herbert M. Canter & Benjamin D. Levine, 305 Montgomery St., Syracuse, NY 13202. *Such merchandise as is dealt in by retail, wholesale and chain grocery and food business houses (except commodities in bulk),* from the facilities of Port Terminals Co., Inc. at or near So. Boston, MA, Foxboro Terminals Co., Inc. at or near Foxboro, MA and Bowker Storage & Distributing Co., Inc. at or near Everett, MA (all being located within the commercial zone for Boston, MA) to that part of NY which is north and west of Sullivan, Dutchess and Ulster counties, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Port Terminals Co., Inc., 666 Summer St., South Boston MA 02127. Bowker Storage & Distributing Co., Inc., 156 Rover St., Everett, MA 02149. Foxboro Terminals Co., Inc., 208 North St., Foxboro, MA 02035. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 52437 (Sub-8TA), filed August 20, 1979. Applicant: SHIPPERS SERVICE EXPRESS, INC., 7200 Fly Road, PO Box 207, E. Syracuse, NY 13057. Representative: Herbert M. Canter and Benjamin D. Levine, 305 Montgomery St., Syracuse, NY 13202. *Such merchandise as is dealt in by retail, wholesale and chain grocery and food business houses (except commodities in bulk),* from Syracuse, NY to that part of NY which is north and west of Sullivan, Dutchess and Ulster counties, NY. Restricted to traffic originating on-line at Boston, MA and to be joined with applicant's present operating authority at Syracuse, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Port Terminals Co., Inc., 666 Summer St., South Boston MA 02127. Bowker Storage & Distributing Co., Inc., 156 Rover St., Everett, MA 02149. Foxboro Terminals Co., Inc., 208 North St., Foxboro, MA 02035. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 59396 (Sub-31TA), filed August 15, 1979. Applicant: BUILDERS EXPRESS, INC., R.D. Limecrest Road, Lafayette, NJ 07848. Representative: Morton E. Kiel, Suite 1832—2 World Trade Center, New York, NY 10048. Common, irregular. *Manganese dioxide.* From Philadelphia, PA and Wilmington, DE to Clifton, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Givaudan Corporation, 100 Delawanna Avenue, Clifton, NJ 07014. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 63417 (Sub-238TA), filed July 16, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Solar panels or collectors,* from Kanakakee, IL to points in AL, DC, DE, FL, GA, KY, LA, MD, NC, NY, OH, PA, SC, TN, VA, WV, for 180 days. Supporting shipper(s): A. O. Smith Corp., P.O. Box 28, Kankakee, IL 60901. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-239TA), filed July 17, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). (1) *Malt beverages* from Albany, GA to pts. in AL, AR, DE, DC, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, and WV. (2) *Materials, supplies; and equipment used in the manufacture, sale, and distribution of malt beverages* (except commodities in bulk) from points in destination states named in (1) above to pts. in AL, FL, GA, for 180 days. Restriction: Authority in (2) above is restricted to traffic destined to the facilities of Miller Brewing Company and its suppliers. Supporting shipper(s): Miller Brewing Company, 3939 Highland Blvd., Milwaukee, WI 53208. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-240TA), filed August 9, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Electric lamps and related articles* between Charleroi, PA and Monroe, LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Westinghouse Electric Corp., 290 Leger Rd., North Huntingdon, PA 15642. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-241TA), filed August 9, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Such commodities as are dealt in or used by manufacturers and distributors of containers and related articles (except commodities in bulk)* from Quakertown, PA to New Orleans, LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cleveland Steel Container Corp., 350 Mill St., Quakertown, PA 18951. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-242TA), filed August 10, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Such commodities as are dealt in or used by automobile supply, household*

appliance, and general merchandise stores between points and places in the US in and east of MN, KS, OK, NE, and TX (except CT, ME, MA, NH, RI, and VT) restricted to traffic originating at or destined to the facilities of Western Auto Supply Co. for 180 days. Supporting shipper(s): Western Auto Supply Co., 2107 Grand Ave., Kansas City, MO 64108. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-243TA), filed July 25, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *New furniture and furniture parts,* from Roanoke, VA, Chocowinity, NC, and Sanford, NC, to points in MO, for 180 days. Supporting shipper(s): Singer Furniture Company, P.O. Box 5337, Roanoke, VA 24012. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 66746 (Sub-25TA), filed August 13, 1979. Applicant: SHIPPERS EXPRESS, INC., 1651 Kerr Drive, P.O. Box 8308, Jackson, MS 39204. Representative: H. D. Miller, Jr., Deposit Guaranty Plaza, Box 22567, Jackson, MS 39205. See attached caption summary. Supporting shipper(s): Cooper Tire & Rubber Co., Box 550, Findlay, OH 45840. Send protests to: Alan C. Tarrant, D/S, ICC, Suite 1441, Federal Building, 100 West Capitol St., Jackson, MS 39201.

MC 67646 (Sub-86TA), filed August 13, 1979. Applicant: HALL'S MOTOR TRANSIT COMPANY, 6060 Carlisle Pike, Mechanicsburg, PA 17055. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. *Common carrier:* regular routes: *General commodities,* except those of unusual value, and except livestock, dangerous explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to tack authority sought herein with authority presently held under docket number MC 67646 and MC 8600. Supporting shipper(s): Fisher Price Toys, 636 Girard Ave., East Aurora, NY 14052. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 74416 (Sub-22TA), filed August 13, 1979. Applicant: LESTER M. PRANGE, INC., Box 1, Kirkwood, PA 17536. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, DC 20005. *Dairy products,* in vehicles equipped with mechanical refrigeration, from New Holland, PA to points in NJ and NY, for 180 days. Supporting shipper(s): Zausner Food Corp., Jackson & Custer Sts., New Holland, PA 17557. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 78687 (Sub-75TA), filed August 20, 1979. Applicant: LOTT MOTOR LINES, INC., West Cayuga Street (P.O. Box 751), Moravia, NY 13118. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. *Iron and steel articles,* from Bethlehem, PA to Winchester, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cives Steel Company, Mid-Atlantic Div., P.O. Box 2778, Winchester, VA 22601. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 78687 (Sub-76TA), filed August 27, 1979. Applicant: LOTT MOTOR LINES, INC., West Cayuga Street, (PO Box 751), Moravia, NY 13118. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. *Lime, limestone, and lime products,* from King of Prussia, Kutztown and Plymouth Meeting, PA and from Canaan, CT to points in Broome, Cayuga, Cortland, Chemung, Chenango, Delaware, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Oneida, Onondaga, Ontario, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates counties, NY, for 180 days. Supporting shipper(s): Agway Inc., Fertilizer Division, PO Box 4933, Syracuse, NY 13221. Send protests to: Anne C. Siler, TA, ICC, 910 Federal, 111 W. Huron St., Buffalo, NY 1420.

MC 86427 (Sub-22TA), filed August 15, 1979. Applicant: I.C.L. INTERNATIONAL CARRIERS LIMITED, 1333 College Ave., Windsor, Ontario Canada N9C 3Y9. Representative: Joseph P. Allen, 7701 W. Jefferson P.O. Box 09259, Detroit, MI 48209. Steel bars and billets, in dump vehicles, and refractory brick for reclamation, in dump vehicles from the Chicago, IL Commercial Zone, and Gary, IN, and its Commercial Zone, to the international boundary of the U.S. and Canada, at Detroit and Port Huron, MI, restricted to foreign traffic, destined to points in Canada for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Courtice Specialty Steel, Ltd., 173 Base Line Rd. East Bowmanville, Ontario, Canada. Send protests to: Dave Hunt, T/A, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 89377 (Sub-3TA), filed August 28, 1979. Applicant: TIMM TRUCKING CORP., 70-70, 80th St., Glendale, NY 11227. Representative: Arthur J. Piken, Esq., Piken & Piken, Esqs., 95-25 Queens Blvd., Rego Park, NY 11374. *New furniture,* between New York, NY, and points in its commercial zone, on the one hand, and, on the other, points in the states of NY, NJ and CT; for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Macy's N.Y., Inc., 66-26 Metropolitan Avenue, Middle Village, NY 11379. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 93147 (Sub-6TA), filed August 6, 1979. Applicant: DELTA TRANSPORT CORPORATION, 840 Union Street, West Springfield, MA 01089. Representative: Paul Sheley, 72 Irene Street, Springfield, MA 01108. *A. Batteries, flashlights, lamps, store display racks, electrical equipment and parts and B. materials, equipment and supplies used in the manufacturing, sale and distribution of commodities in (a) preceeding,* between A. St. Albans, VT, Cleveland, OH, and Edison, NJ, restricted to shipments originating at or destined to the facilities owned or utilized by Union Carbide Corporation at or near the points shown in A. above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Carbide Corporation, 270 Park Avenue, New York, NY 10017. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 94876 (Sub-15TA), filed September 1, 1979. Applicant: RICHARD ACERRA, INC., 38-09 Vernon Blvd., Long Island City, NY 11101. Representative: J. Aiden Connors, 325 East 201 St., New York, NY 10458. *Contract carrier,* irregular routes: *Pavement marking material and paint and paint material, except commodities in bulk,* between Westwood, MA, and Washington, DC, Jackson and Memphis, TN, New York, NY, Indianapolis, IN; for 180 days. Supporting shipper(s): Safety Lines Marking, Inc., 35 Harvard St., Westwood, MA 02090. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 95336 (Sub-13TA), filed August 31, 1979. Applicant: J. B. WILLIAMS EXPRESS, INC., POB V, Williamsburgh Station, Brooklyn, NY 11211. Representative: Arthur J. Piken, Esq., Piken & Piken, Esqs., 95-25 Queens Blvd., Rego Park, NY 11374. *General commodities, with the usual exceptions,*

between points in CT, on the one hand, and, on the other, points in MA and RI; requests authority to tack; for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Nickson Industries, Inc., West and West Main Sts., Plantsville, CT 06479. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10008.

MC 95876 (Sub-304TA), filed August 28, 1979. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). *Iron and steel articles* from Detroit, MI to points in IA, MN and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Great Lakes Steel, Division of National Steel Corporation, Ecorse, Detroit, MI 48229. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 96877 (Sub-4TA), filed August 31, 1979. Applicant: YUMA COUNTY TRANSPORTATION CO., 310 E. Second Avenue, Yuma, Colorado 80759. Representative: Jack B. Wolfe, 350 Capitol Life Center, 16090 Sherman Street, Denver, CO 80203. Regular routes—*General commodities,* (1) between points on the pipeline of Natural Gas Pipeline Co. of America in Morgan and Washington Counties, CO, on the one hand, and on the other, Denver, Akron, and Yuma, CO and their commercial zones; (a) from Denver over U.S. Hwy 6 to its junction with U.S. Hwy 34, then over U.S. Hwy 34 to junctions of county roads on U.S. Hwy 34 near Fort Morgan and Otis, CO, then over said county roads to points on the pipeline, and return over same routes; (b) from Akron, CO over U.S. Hwy 34 to county roads serving said pipeline, then over county roads to points on the pipeline, and return over same routes; (c) from Akron, CO over CO Hwy 71, to county roads serving said pipeline then over county roads to points on the pipeline, and return over same routes; (d) from Yuma, CO over U.S. Hwy 34, to county roads serving said pipeline, then over said county roads to points on the pipeline, and return over same routes. Irregular routes—*General commodities,* (1) between points along the pipeline of Natural Gas Pipeline Co. of America, in Morgan and Washington Counties, CO, on the one hand, and, on the other, Akron, Yuma, and Denver, CO and their commercial zones, for 180 days. There is an underlying ETA seeking 90 days authority. Supporting Shipper(s): Natural Gas Pipeline Company of America, Box 536, Akron, Colorado 80720. Send protests to: District Supervisor R.L. Buchanan, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 100666 (Sub-48TA), filed August 14, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address as applicant). *Glass and glass products,* from the facilities of Libbey-Owens-Ford Co., at or near Toledo, OH to points in LA and TX, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting Shipper(s): Libbey-Owens-Ford Co., 811 Madison Ave., Toledo, OH 43695. Send protests to: Robert J Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 100666 (Sub-487TA), filed August 17, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address as applicant). *Lumber,* from the facilities of Paneling Industries, Inc., at or near Fort Valley, GA to IL, IN, IA, KY, MI, MO, OH, TN, and WI, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting shipper(s): Paneling Industries, Inc., P.O. Box 1288, Fort Valley, GA 31030. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 100666 (Sub-488TA), filed August 22, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address as applicant). Applicant is seeking authority to operate as a common carrier over irregular routes transporting *roofing and insulation materials* from the facilities of the Celotex Corporation at Lockland and Wayne, OH to points in AR, KS, LA, MS, OK, and TX, for 180 days. Applicant has filed an underlying ETA seeking 90 days.

MC 102567 (Sub-3237TA), filed August 17, 1979. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 N.W. Freeway #130, Houston, TX 77040. *Petroleum Products, in bulk, in tank vehicles,* from Helena, and El Dorado, AR to all points in LA, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting shipper(s): Southern Farmers Association, P.O. Box 5489, North Little Rock, AR 72119. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 102616 (Sub-1008TA), filed August 1, 1979. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Rd., Akron, OH 44313. Representative: W. M. Kiefaber (same as applicant). *Chemicals, in bulk, in tank vehicles* between Ludington, MI, on the one hand, and, on the other, all points in U.S., except AK and HI for 180 days. Supporting shipper(s): Dow Chemical USA—Central Div., S. Madison St., Ludington, MI 49431. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 102616 (Sub-1009TA), filed August 10, 1979. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Rd., Akron, OH 44313. Representative: David F. McAllister (same address as applicant). *Liquid chemicals,* in bulk, in tank vehicles, from Beaumont and LaPorte, TX and Lake Charles, LA to points in, AL, AR, CO, GA, IN, IA, IL, KS, KY, LA, MI, MN, MO, MS, NE, ND, OH, OK, PA, SD, TN, TX, WI, for 180 days. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: I.C.C. Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 105566 (Sub-204TA), filed August 21, 1979. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Represenative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. *Glassware* and *glass containers* from Muskogee, OK to all points in AZ, CA, CO, ID, MT, NV, NM, ND, OR, SD, UT, WA and WY, for 180 days. Supporting shipper(s): Corning Glass Works, P.O. Box 158, Corning, NY 14830. Send protests to: P. E. Binder, TS, ICC, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 107376 (Sub-14TA), filed August 10, 1979. Applicant: UNITED STATES EXPRESS, INC., 1209 Triplett Blvd., Akron, OH 44306. Represenative: Robert W. Gardier, Jr., 100 East Broad St., Columbus, OH 43215. *Wrought steel pipe and pipe coupling* from Aliquippa, PA to pts in IL, IN, OH, KY and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pine Pipe & Supply Co., P.O. Box 480, 640 W. Ohio Rd., Frankfort, IL 60423. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107376 (Sub-15TA), filed August 13, 1979. Applicant: UNITED STATES EXPRESS, INC., 1209 Triplett Blvd., Akron, OH 44306. Represenative: Robert W. Gardier, Jr., 100 East Broad St., Columbus, OH 43215. *Iron and steel articles,* btn the facilities of LaBarge Tubular Division located at or near Bellevue, OH, on the one hand, and, on the other, pts. in the states of IA, MN, MO, PA, and KY, for 180 days. An underlying ETA seeks 90 days authority.

Supporting shipper(s): LaBarge Incorp., Tubular Division, No. 20 S. Fourth St., St. Louis, MO 63102. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107496 (Sub-1235TA), filed August 17, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, 666 Grand Ave., Des Moines, IA 50309. *Liquified petroleum gases, in bulk, in tank vehicles,* from Whiting, IN to points in IL, IN, IA, MI, MN, MO, WI, and OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): BTU Contracts, Inc., 6432 North Ridgeway Ave., Lincolnwood, IL 60645. Send protests to: Herbert W. Allen D/S, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107496 (Sub-1236TA), filed August 17, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, 666 Grand Ave., Des Moines, IA 50309. *Liquid Sugar, in bulk, in tank vehicles,* from Reserve, LA to GA, AL, MS, FL, TN, KY, OH, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Godchaux-Henderson Sugar Co., Inc., P.O. Drawer A M, Reserve, LA 70084. Send protests to: Herbert W. Allen D/S, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 109537 (Sub-5TA), filed August 3, 1979. Applicant: HERRON TRANSFER CO., 1026 Franklin St., Salem, OH 44460. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Machinery, earthenware, chinaware, plumbing fixtures and fittings, and equipment, materials, and supplies used in the manufacture and distribution of machinery, earthenware, chinaware, plumbing fixtures and fittings,* (1) between Columbiana County, OH, on the one hand, and, on the other, points in OH, KY, VA, and the DC, (2) between Ford City, PA, on the one hand, and, on the other, points in IL, IN, MI, WV, VA, KY, MD, DE, NJ, NY, ME, NJ, CT, VT, RI, MA, and the DC, and (3) between Newburgh, NY, on the one hand, and, on the other, points in PA, NJ, OH, WV, KY, IN, IL, MI, DE, MD, VA, CT, MA, VT, NH, ME, RI, and the DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Eljer Plumbing Ware, Wallace-Murray Corp., No. 3 Gateway Center, Pittsburgh, PA 15222. Send protests to: I.C.C. Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadephia, PA 19106.

MC 108207 (Sub-525TA), filed August 16, 1979. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same as above). *Such commodities as are dealt in by wholesale, retail, chain grocery, and food business houses (except in bulk) in vehicles equipped with mechanical refrigeration* from Dallas, TX and points in its commercial zone to points in Denver and Grand Junction, CO and points in their commercial zones, for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Kraft, Inc., 500 Peshtigo Court, Chicago, IL 60690. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 108207 (Sub-526TA), filed August 16, 1979. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz St., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same as above). *Meats, meat products, and meat by-products (except hides and commodities in bulk) as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* from the facilities utilized by Swift and Company at or near Clovis, NM and points in its commercial zone to points in ND, for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Swift & Company, 115 West Jackson Blvd., Chicago, IL 60604. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 108207 (Sub-527TA), filed August 17, 1979. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same as above). *Foodstuffs (except commodities in bulk)* from Memphis, TN and points in its commercial zone to points in IL, IA, NE, KS, TX, MO, OK, NM, AR, MN, and LA, for 180 days. Underlying ETA filed for 90 days. Supporting shipper(s): J. M. Smucker Co., 4740 Burbank, Memphis, TN 38118. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 108207 (Sub-528TA), filed August 17, 1979. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same as above). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses (except hides and commodities in bulk) as defined in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 and 766, and foodstuffs (except commodities in bulk)* from points in Chicago, IL and points in its commercial zone to points in CO, for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): There are twelve (12) supporting shippers. Send protests to: Opal M. Jones, TCS, ICC, 819 Taylor St., 9A27 Federal Bldg., Ft. Worth, TX 76102.

MC 108247 (Sub-7TA), filed August 22, 1979. Applicant: WESTCHESTER MOTOR LINES, INC., 35 Edgemere Road, New Haven, CT 06512. Representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, DC 20005. Common carrier, irregular routes *Furniture,* between points in OH, CT and MA, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): G. F. Business Equipment, Inc., P.O. Box 1105, Youngstown, Ohio 44501, Neptune International, 240 Mt. Vernon Street, Dorchester, MA 02125. Temple-Stuart Company, Holman Street, Baldwinville, MA 01436. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Hartford, CT 06103.

MC 109378 (Sub-16TA), filed August 28, 1979. Applicant: SKINNER TRANSFER CORP., P.O. Box 284, Reedsburg, WI 53959. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Plastic articles* from facilities of Flambeau Products Corp. at or near Baraboo, WI to Windom, MN & Galesburg, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Flambeau Products Corp., 801 Lunn Ave., Baraboo, WI 53913. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 109397 (Sub-475), filed July 5, 1979. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. *Spent fuel elements and radioactive material handling container,* between the Florida Power and Light Company's Turkey Point Nuclear Power Plant, Dade County, FL, and Battelle's Columbus Labratories, West Jefferson, OH, for 180 days. Supporting shipper(s): U.S. Department of Energy, Property Management Division, P.O. Box 14100, Las Vegas, Nevada 89114. Send protests to: John V. Barry, D/S, ICC, Room 600, Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 110686 (Sub-61TA), filed August 10, 1979. Applicant: McCORMICK DRAY LINE, INC., Avis, PA 17721. Representative: David A. Sutherlund, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. *Iron and steel, and iron and steel articles* between Williamsport, PA, on the one hand, and on the other, points in CT, DE, KY, MD, MA, NJ, NY, OH, RI, TN, VA, WV, and

the DC for 180 days. Supporting shipper(s): PBI Industries, Inc., P.O. Box 1086, Williamsport, PA 17701. Pullman Power Products, Reach Rd., Williamsport, PA 17701. E. Keller Co., 238 W. Street, Williamsport, PA 17701. Palmer Industrial Coatings, Inc., P.O. Box 56, Newberry Station, Williamsport, PA 17701. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 111687 (Sub-37TA), filed August 15, 1979. Applicant: BEN RUEGSEGGER TRUCKING SERVICE, INC., R #1, Kawkawlin, MI 48631. Representative: Benjamin Ruegesegger (same address as applicant). *Malt beverage with return of empty containers and pallets plus advertising materials,* from Newport, KY and Evansville, IN to various points in MI for 180 days. Supporting shipper(s): G. Heilman Brewing Co., Inc., 925 S. 3rd St., P.O. Box 459, LaCrosse, WI 54601. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm. 1386, Chicago, IL 60604.

MC 112617 (Sub-449TA), filed August 22, 1979. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same as above). Chemicals, in bulk, in tank vehicles, from the plantsite and facilities of Rohm and Haas Company at Deer Park, TX, to points in and east of LA, OK, MO, IA, and MN. Supporting shipper(s): Georgia Tursi, Asst. T/M, Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 114457 (Sub-544TA), filed August 14, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same as applicant). *Plastic, vinyl, nylon, and foam products with accessories, clothing, candles, and accessories, greeting and note cards, and cleaning compounds, cloth, and other novelty items (except commodities in bulk)* between Anniston, AL, Springfield, TN, and Greensburg, KY, on the one hand, and, on the other, Chicago, IL, Columbus and Cincinnati, OH, Newark and North Bergen, NJ, Philadelphia, PA, Springfield and Boston, MA, Atlanta, GA, Orlando, FL, Indianapolis and Fort Wayne, IN, St. Louis, MO, Louisville, KY, and Dallas, TX, and their commercial zones for 180 days. Supporting shipper(s): NASCO, INC., Traffic Manager, 27 North Main Street, Springfield, TN 37172. Send protests to: Judith L. Olson, TA, Interstate Commerce Commission, 110 South 4th Street, 414 Federal Building and U.S. Courthouse, Minneapolis, MN 55401.

MC 114896 (Sub-81TA), filed August 23, 1979. Applicant: PUROLATOR SECURITY, INC., 255 Old New Brunswick Road, Piscataway, NJ 08854. Representative: Carl T. Kessler, 255 Old New Brunswick Road, Piscataway, NJ 08854. Contract carrier, irregular routes for 180 days. Jewelry and articles of unusual value between Newark, NJ and points in Gloucester, Camden, Mercer, Middlesex, Essex, Monmouth, Morris, Ocean, Bergen, Union, Passaic, Counties, NJ; Lehigh, Montgomery, Bucks, Delaware Counties in PA; Rockland County, in NY; and New Castle County in DE. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bamberger's, Division of R. H. Macy Corporation, Inc., 131 Market Street, Newark, NJ 07101. Send protests to: Irwin Rosen, TS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 115716 (Sub-25TA), filed July 13, 1979. Applicant: DENVER–LIMON–BURLINGTON TRANSFER COMPANY, 3650 Chestnut Place, Denver, CO 80216. Representative: Edward C. Hastings, 666 Sherman Street, Denver, CO 80203. *Frozen berries, vegetables, and fruit,* from Santa Maria, Modesto, Salinas, Watsonville, Santa Cruz, Sunnyvale, Gilroy and Turlock, CA to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Inglis Frozen Foods Company, P.O. Box 3111, Modesto, CA 95353. Send protests to: H. Ruoff, 492 U.S. Customs House, Denver, CO 80202.

MC 116077 (Sub-421TA). Applicant: DSI TRANSPORTS, INC., 4550 One Post Oak Place, Suite 300, Houston, TX 77027. Representative: J. C. Browder (same as applicant). Chemicals, in bulk, in tank vehicles from DuPont's plantsite at or near Gregory, TX, to points in AL, AR, CO, FL, GA, IL, LA, KS, KY, MS, MO, NB, NM, OK and TN, for 180 days. Supporting shipper(s): E. I. duPont de Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19898. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 116077 (Sub-422TA). Applicant: DSI TRANSPORT, INC., 4550 One Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder (same as applicant). Liquid sulphur, in bulk, in tank vehicles, from Corsicana, TX to Gales, LA for 180 days. Supporting shipper(s): AC Products Company, Inc., SK–10/Route 4, Henderson, TX 75652. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave., #8610, Houston, TX 77002.

MC 118377 (Sub-9TA), filed August 27, 1979. Applicant: RICHARD R. JOHNCOX, Route 104, Williamson, NY 14589. Representative: Morton E. Kiel, Suite 1832, 2 world Trade Center, New York, NY 10048. *Frozen Foods,* from the facilities used by J. H. Verbridge and Sons, Inc. in Wayne County, NY to points in ME, NH, VT, RI, MA, CT, NY, NJ, PA, DE, MD, VA, OH, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. H. Verbridge and Sons, Inc., 6668 Lake Avenue, Williamson, NY 14589. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 118776 (Sub-39TA), filed August 22, 1979. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Ln., Quincy, IL 62301. Representative: Frank Taylor, Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. *Beer and related advertising material,* from Detroit, MI, Ft. Wayne, IN, Memphis, TN, Milwaukee, WI, Omaha, NE, Peoria, IL to Union, MO for 180 days. An underlying ETA was granted for 90 days. Supporting shipper(s): Jim's Distributing Co., 201 Franklin, Union, MO 63084. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm 1386, Chicago, IL 60604.

MC 118776 (Sub-40TA), filed August 29, 1979. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Lane, Quincy, IL 62301. Representative: Herman Huber, 101 E. High St., Jefferson City, MO 65101. *Rubber, rubber products and such commodities as are manufactured, processed, or dealt in by manufacturers of rubber and rubber products, and equipment, materials and supplies used in the manufacture and distribution thereof (except in bulk),* between the facilities of The Goodyear Tire & Rubber Co. at Hannibal, MO and points in CA, GA, IL, IN, IA, MI, NE, NJ, OH, TX, WI for 180 days. Supporting shipper: The Goodyear Tire & Rubber Company, 1144 E. Market St., Akron, OH 44316. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm 1386, Chicago, IL 60604.

MC 119767 (Sub-364TA), filed August 10, 1979. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *Foodstuffs,* except in bulk, in tank vehicles, from facilities of Aunt Jane's Foods, Inc. at or near Croswell, MI to points in IL, IN, OH and Louisville, KY, for 180 days. An underlying ETA seeks 90 days. Supporting shipper: Aunt Jane's Foods, Inc., 55 E. Sanborn, Croswell, MI 48422.

Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202

MC 119777 (Sub-406TA), filed May 7, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer "L", Madisonville, KY 42431. Representative: Carl U. Hurst, Attorney (same as above). *Paper products,* from the facilities of Western Kraft, Inc., at or near Campi, LA, to Memphis, TN; St. Louis, MO; Bridgeview, Streator, Montgomery, Elk Grove, Mt. Olive, and Alton, IL; Indianapolis and Crawsfordsville, IN; Bowling Green and Louisville, KY; Milan, MI; Circleville, Delaware, and Middletown, OH; Pittsburgh, PA; Riegelsville and Bellmawr, NJ, and Huntington, WV. Supporting shipper: R. M. Sheffer, Western Kraft Paper Group, Willamette Industries, Inc., 3700 First National Bank Tower, Portland, OR 97201. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 120866 (Sub-7TA), filed August 8, 1979. Applicant: THE TIMLAPH CORP. OF VIRGINIA, P.O. Box 34159, Richmond, VA 23234. Representative: Stanley E. McCormick, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. *Corn products, liquid, in bulk, in tank vehicles,* from Petersburg, VA to points in DE, MD, NC, PA, SC and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Archer Daniels Midland Co., Suite 100, Fox Hill Office Bldg., 4550 West 109th Street, Shawnee Mission, KS 66211. Send protests to: Interstate Commerce Commission, Federal Reserve Bank Building, 101 North 7th Street, Room 620, Philadelphia, PA. 19106.

MC 121517 (Sub-12TA), filed August 22, 1979. Applicant: ELLSWORTH MOTOR FREIGHT LINES, INC., P.O. Box 15672, Tulsa, OK 74112. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Fuel oil,* in bulk, in tank vehicles, from El Dorado, KS to Muskogee, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Apex Oil Company, 11 South Meramec, St. Louis, MO 63105. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 123337 (Sub-24TA), filed August 14, 1979. Applicant: E. E. HENRY, 1128 So. Military Highway, Chesapeake, VA 23320. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. *Bananas* from Philadelphia, PA; Wilmington, DE; Baltimore, MD; New York, NY and its commercial zone, Charleston, SC, Miami and Tampa, FL; and Mobile, AL, to Norfolk, VA for 180 days. Supporting shipper(s): Norfolk Banana Distributors, Inc., 3616 E. Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: I.C.C., Fed. Res. Bank Bldg.; 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 123407 (Sub-608TA), filed August 15, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (address same as applicant). *Flooring and flooring systems,* from the facilities of AGA, Inc. at Amasa, MI to points in AL, CA, CO, FL, IN, LA, MS, NE, OH, TX, UT, Chicago, IL and points within 50 miles thereof, Clinton and Davenport, IA and Louisville, KY for 180 days. An underlying ETA seeking 90 days authority was submitted. Supporting shipper(s): AGA, Inc., P.O. Box 25, Amasa, MI 49903. Send protests to: Annie Booker, TA, ICC—219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

MC 123407 (Sub-609TA), filed August 15, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (address same as applicant). *Iron and steel articles,* from the facilities of National Wire Products Corporation (1) located at Atlanta, GA to points in AL, MS, LA and KY: (2) located at Savannah, GA to points in NC, SC, GA and AL; (3) located at Baltimore, MD to points in WV, PA, NY, CT, and MA; and (4) located at Toledo, OH (Oregon, OH) to points in MI, WI and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Wire Products Corp., Fischer Road & Pennsylvania Railroad, Baltimore, MD 21222. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 123407 (Sub-610), filed August 31, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller (same address as applicant). *Iron and steel articles,* from the facilities of Atlantic Steel Co. at Atlanta and Cartersville, GA, to points in IL, IN, KY, KS, MI, MN, MO, OH, PA, TX, and WI for 180 days. An underlying ETA has been granted for 90 days authority. Supporting shipper(s): Atlantic Steel Company, P.O. Box 1714, Atlanta, GA 30301. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm. 1386, Chicago, IL 60604.

MC 123987 (Sub-28TA), filed July 11, 1979. Applicant: JEWETT SCOTT TRUCK LINE, INC., Box 267, Mangum, OK 73554. Representative: Jewett Scott Jr. (same address as applicant). *Plastic Pipe and related articles,* from the facilities of Carlon at Oklahoma City, OK, to points in AZ, CO, KS, MO, NE, ND, NM, SD, TX, UT, & WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carlon (an Indian Head Company), 6500 South Interpace P.O. Box 15219, Oklahoma City, OK 73155. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 123987 (Sub-29TA), filed August 9, 1979. Applicant: JEWETT SCOTT TRUCK LINE, INC., Box 267, Mangum, OK 73554. Representative: Jewett Scott, Jr. (same address as applicant). *Knocked down log structures and appropriate hardware (windows, doors, sealants, nails and lumber)* from Englewood, CO, to points in OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colorado Log Homes, Inc., 1925 West Dartmouth, Englewood, CO 80110. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 124117 (Sub-41TA), filed August 16, 1979. Applicant: EARL FREEMAN AND MARIE FREEMAN, d.b.a. MID-TENN EXPRESS, P.O. Box 101, Eagleville, TN 37060. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. (1) *Malt beverages and related advertising matter* from Albany, GA and its commercial zones to points in AL, FL, GA, KY, LA, MS and TN, and (2) *Materials, equipment, and supplies used in the manufacture, sale, and distribution of malt beverages, (except commodities in bulk)* from the states named above to Albany, GA and its commercial zone, for 180 days. Supporting shipper(s): Miller Brewing Company, 3939 West Highland Blvd., Milwaukee, WI 53208. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 124236 (Sub-98TA), filed August 16, 1979. Applicant: CHEMICAL EXPRESS CARRIERS, INC 4645 North Central Expressway, Dallas, TX 75205. Representative: Joe A. Morgan (address same as above). *Cement, in bulk* from Hays County, TX to all points within the State of New Mexico for 180 days. ETA for 90 days filed. Supporting shipper(s): Texas Cement Company, P.O. Box 610, Buda, TX 78610. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St. Ft. Worth TX 76102.

MC 124306 (Sub-66TA), filed August 17, 1979. Applicant: KENAN TRANSPORT COMPANY, INC. P.O. Eo

2729, Chapel Hill, NC 27514. Representative: W. David Fesperman, P.O. Box 2729, Chapel Hill, NC 27514. *Petroleum products, in bulk, in tank vehicles* from Friendship and Selma, NC to points in VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Therre are approximately 5 supporting shippers. Their statements may be examined at the office listed below or Headquarters. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd-Rm CC516, Charlotte , NC 28205.

MC 124306 (Sub-67TA), filed August 21, 1979. Applicant: KENAN TRANSPORT COMPANY, INCORPORATED, P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman, P.O. Box 2729, Chapel Hill, NC 27514. *Antifreeze and liquid dust suppressant, in bulk, in tank vehicles,* from Roanoke, VA to points in KY, PA, UT, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wen-Don Corporation, P.O. Box 13905, Roanoke, VA 24034. Send protests to: Sheila Reece, TA, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 124887 (Sub-94TA), filed August 23, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230 Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Building and construction materials restricted to shipments for the account of Best Steel Products, restricted against commodities in bulk* between points in AL, FL, GA, LA, MS, NC, SC, and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Best Steel Products, 5505 Gray Street, Tampa, FL 33609. Send protests to: Jean King, T/A, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124887 (Sub-95TA), filed August 14, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Terpene chemicals, not in bulk,* from plant site of SCM—Organic Chemicals Division in Jacksonville, FL, to East Coast Terminal, Ocean Terminal, and Garden City Terminals at or near Savannah, GA; for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): SCM—Organic Chemicals Division, P.O. Box 389, Jacksonville, FL 32201. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124896 (Sub-96TA), filed August 21, 1979. Applicant: WILLIAMSON TRUCK LINES, INC., Box 3485, Wilson, NC 27893. Representative: Peter A. Greene, 900 17th St. NW., Washington, DC 20006. *Tires and tubes* (1) from points in TN, OH, NJ, PA, AL and MS to points in NC, SC and VA and (2) between points in NC, SC and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): ITCO Corporation T/A, Interstate Tire Company, P.O. Box 641, Wilson, NC 27893. Send protests to: Sheila Reece, TA, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 125996 (Sub-87TA), filed August 22, 1979. Applicant: GOLDEN TRANSPORTATION, INC., 2200 South 400 West, Salt Lake City, UT 84115. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. *Meat, meat products and meat by-products* (except hides and commodities in bulk) from Huron, SD to Las Vegas, NV, Reno, NV, Salt Lake City, UT, and OR, and WA, for 180 days. Supporting shipper(s): Armour & Co., 111 W. Clarendon, Greyhound Tower, Phoenix, AZ 85077. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126537 (Sub-35TA), filed August 22, 1979. Applicant: TURNER EXPEDITING SERVICE, P.O. Box 21333, Louisville, KY 40221. Representative: Wm. P. Whitney, Jr., Atty., Suite 708 McClure Bldg., Frankfort, KY 40601. *General commodities* (with the usual exceptions), between Lexington, KY, and Memphis, TN, restricted to the transportation of traffic having an immediate prior or subsequent movement by air. Supporting shipper(s): E. Logan Brown, Jr., Manager, Emery Air Freight Corp., Blue Grass Field, Lexington, KY 40511. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 128007 (Sub-146TA), filed August 29, 1979. Applicant: HOFER, INC., P.O. Box 583, Pittsburg, KS 66762. Representative: Larry E. Gregg, 641 Harrison, Topeka, KS 66603. *Wheat middlings,* in bulk, from facilities owned or used by ConAgra, Inc., at or near Parsons, KS to points in AR, MO, OK and TX; 180 days, common, irregular; Supporting shipper: ConAgra, Inc., 3801 Harney, Omaha, NE 68131; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 128087 (Sub-8TA), filed August 21, 1979. Applicant: JOHN N. JOHN, III, INC., 1000 West Second Street, Crowley, LA 70526. Representative: John N. John III (same address as applicant). Applicant is seeking authority to operate as a common carrier over irregular routes transporting *liquid amorphous polypropylene* from Crowley, LA to points in AR, DE, GA, IL, IN, KS, KY, MN, MO, MA, NE, NY, NC, OH, PA, SC, TX, VA, and WI, for 180 days. Supporting shipper(s): Hercules Incorporated, 3169 Holcomb Bridge Road, Suite 700, Norcross, GA 30071. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 128616 (Sub-28TA), filed August 13, 1979. Applicant: GELCO COURIER SERVICES, INC., P.O. Box 1975, St. Paul, MN 55111. Representative: Sally G. Galway (same as applicant). *Contract carrier:* irregular routes: *Commercial papers, documents and written instruments (except currency and negotiable securities), as are used in the business of banks and banking institutions,* between North Platte, NE, on the one hand, and, on the other, Holyoke, CO, for 180 days. Supporting shipper(s): NBC Computer Services Corporation, President, Chief Executive Officer, 13th & O Streets, Lincoln, NB 68508. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 134286 (Sub-127TA), filed August 14, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as applicant). *(1) Glass and glass products and (2) materials, equipment and supplies used in (1) above (except in bulk)* (1) From the facilities of PPG Industries, Inc. at or near Evansville, IN to points in MO, WI, MI, OH, IL, PA, TX, GA, OK, KS and MD and (2) From Points in MO, WI, MI, OH, IL, PA, TX, GA, OK, KS and MD to the facilities of PPG Industries, Inc. at or near Evansville, IN for 180 days. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134287 (Sub-75TA), Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, California 90280. Representative: Patricia M. Schnegg, KNAPP, GROSSMAN & MARSH, 707 Wilshire Boulevard, Suite 1800, Los Angeles, California 90017. *Containers and paper products,* from Portland, Oregon to all points in California. Supporting shipper(s): Chase Bag Company, General Traffic Manager, 814 Commerce Drive, Oak Brook, IL 60521. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, California 90053.

MC 134467 (Sub-49TA), filed August 17, 1979. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Materials, equipment and supplies* used in the processing and distribution of poultry and poultry products, from points in GA, IA, IL, MS, NC, NJ, OH, TN, TX and WV to Benton, Carroll, Howard, Pulaski, and Washington Counties, AR; Webster Parish, LA; Barry and Lawrence Counties, MO; and Grundy County, TN, restricted to transportation of products destined to facilities of Tyson Foods, Inc., for 180 days. Supporting Shipper(s): Tyson Foods, Inc., 2210 Oaklawn, Springdale, AR 72764. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 134467 (Sub-60TA), filed August 21, 1979. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Frozen foods* from facilities of Foodways National, Inc., at or near Hartford and Wethersfield, CT, to points in OH, MI, IL, MN, MO, TX, CA, ID, WA, OR and AR, for 180 days. Supporting shipper(s): Foodways National, Inc., 1000 Silas Dean Highway, Wethersfield, CT 06109. Send protests to: William H. Land, DS, 3108 Federal Bldg. Little Rock, AR 72201.

MC 135197 (Sub-24TA), filed August 14, 1979. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 63461. Representative: Robert Leeser (same as applicant). *Liquid Agricultural insecticides in drums,* FROM THE FACILITY OF Underground Warehouse, Inc., at or near Quincy, IL to St. Joseph, MO, Fremont, NE, and Albert Lea, MN, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): American Cyanamid Company, P.O. Box 817, Hannibal, MO 63401. Send protests to: Vernon V. Coble, DS, I.C.C. 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 135797 (Sub-256TA), filed August 15, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). *Paper bags, plastic bags, and bags made of paper and plastic,* from facilities of Great Plains Bag Corporation, at (1) New Philadelphia, OH to points in AL, AZ, CA, CO, CT, ID, IL, IN, KS, KY, ME, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WI and WY, (b) Des Moines, IA to points in AL, AZ, CA, CT, DE, FL, GA, ID, IN, IA, KY, ME, MD, MA, MI, NV, NH, NJ, NM, NY, NC, OR, PA, RI, SC, TN, UT, VT, VA, WA, WV and D.C., (c) Hodge, LA to points in AZ, AR, CA, CO, CT, ID, KS, KY, LA, ME, MA, MI, MN, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI and WY, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): Great Plains Bag Corporation, 2201 Bell Ave., Des Moines, IA 50321. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 136786 (Sub-166TA), filed August 22, 1979. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 4601 Excelsior Blvd., Minneapolis, MN 55416. *Foodstuffs, in vehicles equipped with mechanical refrigeration (except commodities in bulk),* from the facilities of United States Cold Storage, a division of American Consumer Industries, Inc., at or near Chicago, IL to points in CT, DE, DC, GA, IA, KS, MD, MA, MO, NE, NJ, NY, NC, PA, RI, SC, TX, and VA for 180 days. Supporting shipper(s): U.S. Cold Storage, 8424 W. 47th St., Lyons (Chicago), IL 60534. Send protests to: Herbert W. Allen DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 138026 (Sub-25TA), filed August 23, 1979. Applicant: LOGISTICS EXPRESS, INC., d.b.a. LOGEX, Etiwanda and Slover Avenues, Fontana, California 92335. Representative: David P. Christianson of Knapp, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, California 90017. *Acetylene, in bulk,* from Geismar and Taft, LA and Texas City, TX to Alabama, Florida, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee and Texas, for 180 days. Supporting shipper(s): Union Carbide Corporation, Manager of Traffic Services, 270 Park Avenue, New York, New York 10017. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, California 90053.

MC 138076 (Sub-17TA), filed August 10, 1979. Applicant: HEAVY HAULING, INC., 1100 West Grand, Salina, KS 67401. Representative: Clyde N. Christey, Suite 110L, 1010 Tyler, Topeka, KS 66612 . *Fabricated iron and steel articles* from facilities of Geo. C. Christopher & Son, Inc., Wichita, KS to points in the Continental U.S., for 180 days, common, irregular. Supporting shipper: Geo. C. Christopher & Son, Inc., Wichita, KS. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 138206 (Sub-9TA), filed August 29, 1979. Applicant: TRULINE CORPORATION, 4455 South Cameron Avenue, Las Vegas, Nevada 89103. Representative: Robert G. Harrison, 4299 James Drive, Carson City, Nevada 89701. (1) *Lumber, Wood Products and Building Materials,* from points in Los Angeles and Orange Counties, CA, and Clark County, NV to points in AZ, CO and NM; and (2) *gypsum and gypsum products* from points in Lincoln and Bernalillo Counties, NM to points in Clark County, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lumber Sales, Inc., 3500 W. Flamingo Road, Las Vegas, NV 89103. Lone Star Building Centers, 2041 E. Rosecrans, El Segundo, CA. Tolko Forest Products, Suite 204, 1571 Bellevue Avenue, West Vancouver, B.C. Send protests to: DS, W. J. Heutig, ICC, 203 Federal Building, 705 North Plaza Street, Carson City, NV 89701.

MC 139207 (Sub-TA), filed August 22, 1979. Applicant: MCNABB-WADSWORTH TRUCKING CO., INC., 305 S. Wilcox Drive, Kingsport, TN 37665. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 13th Street, N.W., Washington, DC 20004. *Bags and commodities used in the manufacture of bags* between the facility of Southern Bay Corporation at Yazoo City, MS on the one hand, and on the other, points in FL, GA, SC, NC, TN, KY, WV, OH, IN, MO, AR; LA, TX, AL, IL and OK, for 180 days. Supporting shipper(s): Southern Bag Corporation, P.O. Box 389, Yazoo City, MS. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 139207 (Sub-139207-11TA), filed August 22, 1979. Applicant: MCNABB-WADSWORTH TRUCKING, INC., 305 S. Wilcox Drive, Kingsport, TN 37665. Representative: Henry E. Seaton, 929 Pennyslvania Bldg., 425 13th Street, N.W., Washington, DC 20004. *Canned goods* from Moorhead, MS to Birmingham and Gadsden, AL; Atlanta and Savannah, GA; Nashville and Knoxville, TN; Louisville and Lexington, KY; Charlotte and Raleigh, NC; Greenville and Columbus, SC; Salen and Richmond, VA; Charleston and Elkins, WV, for 180 days. Supporting shipper(s): Allen Canning Company, P.O. Box 250 305 E. Main St., Siloam Springs, AR 72761. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 139244 (Sub-10TA), filed August 10, 1979. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, Attorney, 300 Reisch Building, Springfield, IL 62701. *Clay sewer pipe, drain tile, flue liners, chimney tops and wall coping,* from the

facilities of the Logan Clay Products Co. at Logan, OH and Brazil, IN to points in IL, IN, KY and IA (restricted to movements origination at the facilities of Logan Clay Products Co. at Logan, OH and Brazil, IN) for 180 days. Supporting shipper(s): The Logan Clay Products Co., P.O. Box 698, Logan, OH 43138. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 139276 (Sub-9TA), filed August 24, 1979. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Ave., Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). *Iron and steel products,* between the facilities of Joseph T. Ryerson & Son, Inc. at Elk Grove Village and Chicago, IL and points in MI on and south of US 96, Muskegon to Lansing, US 69 to Flint, Lansing, Flint, Kalamazoo, and Detroit and points in IN i.e. Angola, Indianapolis, Terre Haute, South Bend, Logansport, Ft. Wayne, Berne, Elkhart, Andrews, New Albany, Seymour, Evansville, Bedford and Bloomington for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Joseph T. Ryerson & Son, Inc., 2621 W. 15th Place, Chicago, IL 60608. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm 1386, Chicago, IL 60604.

MC 140247 Sub-3TA), filed August 22, 1979. Applicant: ALLSTATE CHARTER LINES, INC., P.O. Box 9022, Fresno, CA 93790. Representative: M. J. Stecher, 256 Montgomery St., 5th Fl., San Francisco, CA 94104, *Passengers and their baggage* in the same vehicle with passengers, in charter and special operations, between points in Imperial and San Diego Counties, CA on the one hand, and, on the other, all points in NV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): ABC Tours of San Diego/A Tour Centre, 3825 Coronado Ave., San Diego, CA. Send protests to: D/S N. C. Foster, 211 Main—Suite 500, San Francisco, CA 94105.

MC 140681 (Sub-1TA), filed April 5, in Washington, D.C. office. Applicant: PEBBLE HAULERS, INC., 2630 Delta Avenue, Colorado Springs, CO 80910. Representative: Thompson and Kelley, 450 Capitol Life Center, Denver, CO 80203. *Iron or steel grinding balls,* from facilities of CF&I Steel Corporation, Pueblo, CO to Aneconda Carr Fork Project near Tooele, UT and facilities of Kennecott Copper Corp., Magna, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kenecott Copper Corporation, P.O. Box 16600, Salt Lake City, UT 84116. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 141097 (Sub-23TA), filed August 20, 1979. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. *Synthetic staple fiber, synthetic fiber yarn, and synthetic plastics* from Rossville and Milledgeville, Georgia; Landrum, Columbia, and Irmo, SC; Moncure, NC; and Bermuda Hundred, VA to points in CA, under a continuing contract(s) with Allied Chemical Corporation of NY, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Allied Chemical Corp., 1411 Broadway, New York, NY 10018. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 141867 (Sub-10TA), filed June 19, 1979. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Ronald R. Brader, (same as above). *Commodities as are dealt in or used by manufacturers of plastic containers,* from Garden Grove, CA to points in UT, WY, MT and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Container Supply Company, 12571 Western Ave., Garden Grove, CA 92641. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 142096 (Sub-16TA), filed August 15, 1979. Applicant: MILLER BROS. TRUCKING CO., INC., 4100 W. Mitchell St., Milwaukee, WI 53215. Representative: James A. Spiegel, 6425 Odana Rd., Madison, WI 53719. *Empty containers,* from Ligonier, IN to Milwaukee, WI. Restricted to transportation originating at the facilities of Monsanto, Inc., Ligonier, IN and terminating at the facilities of W. B. Bottle Supply Co., Inc., Milwaukee, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): W. B. Bottle Supply Co., Inc., 836 E. Bay St., Milwaukee, WI 53207. Send protests to: John R. Ryden, DS, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 142106 (Sub-1TA), filed August 8, 1979. Applicant: VIP COMMUTER CORPORATION, 14810 Danville Rd., Dale City, VA 22193. Representative: Mr. Sylvanus G. Bent (same as applicant). *Passengers and their baggage,* in the same vehicle with passengers, in round-trip, special and charter operations: (1) from Prince William and Fairfax Counties, VA, to points in Washington, DC, MD, DE, PA, NJ, NH, VT, CT, MA, ME, WV, OH, NC, SC, GA, FL, and return to point of origin. (2) From Washington, DC to points in MD, VA, DE, PA, NJ, NY, NH, VT, MA, ME, WV, OH, NC, SC, GA, FL, and return to point of origin, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 15 supporting shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: I.C.C. Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 142367 (Sub-684TA), filed August 8, 1979. Applicant: CARLTON ENTERPRISES, INC., P.O. Box 520, 4588 State Route 82, Mantua, OH 44255. Representative: Neal A. Jackson, 1155 15th St., NW., Washington, DC 20005. *Metal buildings, prefabricated building parts and items used in the installation thereof* from the facilities of National Steel Products Co. (1) at or near Terre Haute, IN to points in the U.S. in and east of WI, IL, MO, AR, LA and (2) at or near La Grange, GA to points in the U.S. in and east of MI, IN, KY, TN, AR, OK, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Steel Products, Co., P.O. Box 40490, Houston, TX 77040. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 142977 (Sub-4TA), filed August 13, 1979. Applicant: HOOSIER FREIGHT LINES, INC., P.O. Box 16006, Louisville, KY 40216. Representative: James K. Slayton, Atty., Suite 216, Atkinson Square, Louisville, KY 40218. Paper and paper products, (1) from the plantsite of Kieffer Paper Company, Brownstown, IN; to Louisville, KY, and its commerical zone; Cincinnati, OH, and its commerical zone; Indianapolis, IN, and its commercial zone; Bloomington, IN; Bedford, IN; Tell City, IN; Cannelton, IN; St. Meinrad, IN; Salem, IN; North Vernon, IN; Seymour, IN; and Lewisport, KY, and (2) from Cincinnati, OH and its commerical zone; Louisville, KY and its commerical zone; Indianapolis, IN, and its commercial zone, to the plantsite of Kieffer Paper Company, Brownstown, IN. Supporting shipper(s): Eugene Scott, Kieffer Paper Mills, Brownstown, IN. Send protests to: (Ms.) Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 143127 (Sub-52TA), filed August 27, 1979. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, Traffic Mgr., (same address as above). *Carbon, charcoal, charcoal briquettes, hickory chips, carbon wood products, lighter fluid and materials and supplies used in the distribution or manufacture of charcoal*

and charcoal briquettes, (except commodities in bulk), between points in NY on the one hand, and, on the other, all points in AR, CT, DE, DC, FL, GA, KY, LA, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA and WV. Restricted to traffic originating at or destined to the facilities utilized by Husky Industries, Inc., for 180 days. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 143516 (Sub-2TA), filed August 6, 1979. Applicant: RAIL HIGHWAY TRANSPORTATION, 11 Heid Ave., Dayton, OH 45404. Representative: Thomas F. Kilroy, Suite 406 Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. *Reinforce concrete pipe and concrete products; and materials and supplies that are used or useful in the manfacture, production, and installation of reinforced concrete pipe and concrete products (except commodities in bulk),* between Dayton, OH, on the one hand, and, on the other, all points in IN, IL, IA, KY, MI, MN, MO, NY, PA, TN, WV, WI, VA, NC, SC, GA, AL, MS, MD, NJ, AR, OH and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Price Brothers Co., 367 W. Second St., Dayton, OH 45401. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 144687 (Sub-2TA), filed August 31, 1979. Applicant: CURTIS R. McPEAK, d.b.a. McPEAK TRUCKING, Box 35, Dalton City, IL 61925. Representative: Robert Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Parts, machinery, supplies and materials used in the manufacture of grain storage, grain handling and drying equipment,* for the account of Grain Systems, Inc., from points in IN, IA, KS, MO, MI, NJ, and OH to Assumption, IL for 180 days. An underlying ETA was granted for 90 days authority. Supporting shipper(s): Grain Systems, Inc., Rt. 51, Assumption, IL 62510. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Rm. 1386, Chicago, IL 60604.

MC 145026 (Sub-6TA), filed August 23, 1979. Applicant: NORTHEAST CORRIDOR EXPRESS, INC., Railroad Ave., Federalsburg, MD 21632. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 11th St. NW., Washington, DC 20001. *Foodstuffs,* from Millsboro, DE to points in CT, RI, MA, VT, NH, ME, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Vlasic Foods, Inc., 33200 W. 14th Mile Rd., West Bloomfield, MI 48033. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 145337 (Sub-4TA), filed August 24, 1979. Applicant: P.M.E., LTD., Box 181, Group 261, R.R. 2, Winnipeg, Manitoba, Canada R3C 2E6. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses,* as described in Sections "A" and "C" of Appendix I to the report in *Descriptions,* etc., 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the ports of entry along the International Boundary Line between the U.S. and Canada at points in MT and ND to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Forest Randolph & Co., P.O. Box 4184, San Rafael, CA 94903. Burns Meats, Ltd., P.O. Box 70, Winnipeg, Man., Can., R3C 2G5. Send protests to: H. E. Farsdale, DS, ICC, Room 268 Fed. Bldg., 657 2nd Avenue North, Fargo, ND 58102.

MC 145506 (Sub-3TA), filed June 20, 1979. Applicant: ODOM TRUCKING CO., INC., Route 4 Box 165, Eufaula, AL 36027. Representative: W. K. Martin, P.O. Box 2069, Montgomery, AL 36103. *Meat, meat products, meat by-products and articles distributed by meat packing houses as described in Sections A and C of Appendix 1 to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and skins and commodities in bulk),* from the facilities utilized by John Morrell & Co., at or near Shreveport, LA, to Montgomery, AL, and all places in FL, for 180 days. Supporting Shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 145606 (Sub-2TA), filed August 13, 1979. Applicant: JUNIUS ELMORE, JR., 815 East 2nd Street, Cheyenne, WY 82001. Representative: Junius Elmore, Jr. (same address as applicant). *Automotive parts and accessories; automotive equipment, and supplies, equipment and materials,* from Denver, CO Commercial Zone to Cheyenne, WY Commercial Zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Watson's Sidles Co. of Wyoming, 400 West 17th St. Cheyenne, WY 82001, Genuine Parts, Co., 907 East 16th St., Cheyenne, WY 82001. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Rm 105 Federal Bldg & Crt House, 111 South Wolcott, Casper, WY 82601.

MC 145636 (Sub-9TA), filed August 17, 1979. Applicant: BOB BRINK, INC., 165 Steuben Street, Winona, MN 55987. Representative: Michael A. Thill, P.O. Box 676, 128½ East Third Street, Winona, MN 55987. *Photographic materials, reproduction equipment and supplies requiring temperature controlled equipment* between Lewiston, MN and Redwood City, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Camera Art, Inc., Lewiston, MN 55952. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145636 (Sub-10TA), filed July 24, 1979. Applicant: BOB BRINK INCORPORATED, 165 Stueben Street, Winona, MN 55987. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403 *Plastic articles, other than expanded,* from Winona, MN to points in CA, WA, TX, UT, and AZ, and Jefferson City, MO, Tulsa, OK, Carson City and Reno, NV, for 180 days. Supporting shipper(s): Fiberite Corporation, 501 West Third Street, Winona, MN 55987. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401

MC 145926 (Sub-4TA), filed July 20, 1979. Applicant: HALL BROS. TRANSPORTATION CO., INC., State Road 37 North, Orleans, IN 47452. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Contract Carrier: Irregular Routes: (1) *Automobile parts,* (a) from the facilities of Ford Aerospace & Communications Corp., Div. of Ford Motor Co. at Bedford, IN to Indianapolis, IN; Lorain, OH and St. Louis, MO. (b) from Indianapolis, IN, to Chicago, IL; Detroit, MI; Lorain, OH and St. Louis, MO. (2) *Materials, equipment and supplies,* from points in MI and OH to the facilities of Ford Aerospace & Communications Corp., Div. of Ford Motor Co., at Bedford, IN for 180 days. Restricted to a contract or continuing contracts with Ford Aerospace & Communications Corp., Div. of Ford Motor Company. Supporting shipper: Ford Aerospace & Communications Corp., Div. of Ford Motor Co., 3120 West 16th Street, Bedford, IN 46421. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio Street, Rm. 429, Indianapolis, IN 46204.

MC 146176 (Sub-7TA), filed August 10, 1979. Applicant: J & L TRANSPORT, INC., Rt. 1, Box 306, Almond, WI 54909. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are manufactured, processed, sold, used, distributed or dealt in by manufacturers, converters*

and printers of paper and paper products (except commodities in bulk) from facilities of Hoffmaster Co., Inc. at or near Oshkosh, WI to points in AZ, CA, NV, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hoffmaster Co., Inc., 2920 N. Main St., Oshkosh, WI 54903. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146327 (Sub-8TA), filed August 29, 1979, Applicant: UNITED TRUCKING COMPANY, P.O. Box 1158, Miles City, MT 59301. Representative: Joe Gerbase, Anderson, Brown, Gerbase, Cebull & Jones, 100 Transwestern Bldg., Billings, MT 59101. *Wine and champagne* from Louisville, KY to all points in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jos. Garneau Company, P.O. Box 1080, Louisville, KY 40201. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 146336 (Sub-8TA), filed August 2, 1979. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC., 902 Avenue N, Grand Prairie, TX 75050. Representative: E. Larry Wells, Winkle and Wells, P.O. Box 45538, Dallas, TX 75245. *Contract carrier,* irregular routes, *Disposable surgical supplies, and pieced or finished paper or non-woven fabric used in the manufacture of disposable surgical supplies,* (1) between Nashville, TN and Gainesville, GA; (2) from Sherman, TX to Los Angeles, CA and Charlotte, NC; (3) between El Paso, TX and Waco, TX; (4) from El Paso, TX to Sherman, TX (all shipments to or from El Paso, TX will be in intrastate or foreign commerce over the Mexican border) for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Surgikos, 501 George Street, New Brunswick, NJ. Send protests to: Opal M. Jones, TCS, Interstate Commerce Commission, 9A27 Federal Bldg., 819 Taylor St. Ft. Worth, TX 76102.

MC 146397 (Sub-3TA), filed June 21, 1979. Applicant: M.T.I. TRUCKING, INC., 9000 Keystone Crossing, Indianapolis, IN 46240. Representative: Donald W. Smith (same Address as Applicant). *Contract Carrier:* Irregular Routes: *Glass containers and accessories* from the facilities of Anchor Hocking Corporation at Gurnee, IL to Tipton and Frankfort, IN and Leipsic, OH for 180 days. SUPPORTING SHIPPER: Anchor Hocking Corporation, 109 N. Broad Street, Lancaster, OH. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 146817 (Sub-2TA), filed July 25, 1979. Applicant: GEORGE CAVES, P.O. Box 144, Benedict, NE 68316. Representative: Max H. Johnston, 4905 Cresthaven, Lincoln, NE 68516. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* FROM THE FACILITIES USED BY Farmland Foods, Inc. at or near Carroll, Cherokee, Denison, Fort Dodge, Des Moines, Iowa Falls and Sioux City, IA; Crete, Lincoln and Omaha, NE to points in AL, AR, KS, LA, MS, MO, OK, TN and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 146976 (Sub-No. 1TA), filed May 3, 1979. Applicant: FOREWAY TRANSPORTATION, INC., 6633 Lake Michigan Dr., Allendale, MI 49401. Representative: BLACK & HALL 7610 COTTONWOOD DR. Jenison, MI 49428. *Paper, o/t newsprint, pulpboard and materials* used in the manufacture and distribution thereof, From the plantsite of S.D. Warren Paper Co., a Div. of Scott Paper Co., at Muskegon, MI to points in DC. IL, IN, KY, MD, NM, NJ, NY, OH, PA, TN, and WI. for 180 days. Supporting shipper: S.D. Warren Co., a Div. of Scott Paper Co., 2400 Lakeshore Dr. Muskegon, MI 49443. Send protests to: ICC, 225 Federal Bldg., 325 West Allegan St., Lansing MI 48933.

MC 147096 (Sub-3TA), filed August 13, 1979. Applicant: MADISON BROTHERS DELIVERY SERVICE, INC., 101 Indiana Ave., Toledo, OH 43602. Representative: Brian S. Stern, 2425 Wilson Blvd., Suite 327, Arlington, VA 22201. (1) *Automobile parts, and (2) materials, equipment, and supplies* used in the manufacture, production, and assembly of motor vehicles btn Toledo, OH, on the one hand, and, on the other, pts. in IL, located on and north and east of a line formed by Interstate Hwy 74, beginning at its junction with the IL–IN state line, then west along Interstate Hwy 74, to its junction with IL Hwy 47, then north along Interstate Hwy 47, to its junction with the IL–WI state line; pts. in IN, located on and north of US Hwy 150, beginning at its junction with the Ohio River, then northwest along US Hwy 150 to its junction with US Hwy 50, at or near Shoals, IN, then west along combined US Hwy 50/150, to its combined junction with US Hwy 41, and US Hwy 50, then west along US Hwy 150, to its junction with the Wabash River; and pts. in the lower peninsula of MI, restricted against the transportation of any single shipment weighing more than 10,000 lbs, and further restricted to the performance of same day pickup and delivery, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Motors Corp., Toledo Plant, P.O. Box 909, Toledo, OH 43692. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 147107 (Sub-4TA), filed June 18, 1979. Applicant: ROBERT L. BUELL AND LAWRENCE W. DERRY, d.b.a., Spokane-St. Maries Auto Freight Service, 3810 Boone Avenue E., Spokane, WA 99202. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Lumber, lumber products and wood products,* from points in Lincoln, Flathead, Sanders, Lake and Mineral Counties, MT to points in ID, WA, OR and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Intermountain-Orient, Inc., P.O. Box 4297, Boise, ID 83704. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147227 (Sub-3TA), filed August 21, 1979. Applicant: ATLANTIC MARKETING CARRIERS, INC., 3940 Clarkson Dr., Kingsburg, CA 93631. Representative: E. Meierhoefer, Suite 423, 1511 K St., N.W., Washington, D.C. 20005. *Empty glass bottles* (one gallon or less), (1) from Coventry, RI, and points in its commercial zone to points in MI, IL, MO, KY, and IN; (2) from Joliet, IL and points in its commercial zone to points in CA, NM and AZ; (3) from Parkersburg, WV and points in its commercial zone to points in CA, NM, AZ, IL, MO, and IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Bottle Co., 1 Bala-Cnywyd Plaza, Bala-Cynwyd, PA 19004. Sent protests to: D/S, N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

MC 147227 (Sub-4TA), filed August 23, 1979. Applicant: ATLANTIC MARKETING CARRIERS, INC., 39400 Clarkson, Dr., Kingsburg, CA 93631. Representative: E. Meierhoefer, Suite 423, 1511 K St., N.W, Washington, D.C. 20005. *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) which are at the time moving on shippers' association bills of lading, from Willsboro, NY and points in MA and VT to points in IN, OH, MI, MO, IL,

WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): New England Shipping Association Co-operative, 1029 Pearl St., Brockton, MA 02403. Send protests to: N. C. Foster, D/S, Suite 500, 211 Main St., San Francisco, CA 94105.

MC 147297 (Sub-3TA), filed August 17, 1979. Applicant: DA-RON CORPORATION, 3305 North Broadway, Muncie, IN 47303. Representative: David O. Foreman, (address same as applicant). *Contract carrier:* Irregular routes; *Mechanic creepers,* from the facilities of P & B Manufacturing at Westville, NJ, to Chicago, IL; Indianapolis, IN; Greenwood, MS; Memphis, TN; West Jorda, UT and Green Bay, WI for 180 days. SUPPORTING SHIPPER: P & B Manufacturing, Frontage Row, Bellsea Drive, Westville, NJ 08093. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. Supporting shipper(s):

MC 147397 (Sub-1TA), filed August 14, 1979. Applicant: 5 STAR TRUCKING, INC., 5100 South Archer, Chicago, IL 60632. Representative: Stephen H. Loeb, Suite, 33 N. LaSalle Street, Chicago, IL 60602. *General commodities* (except those of unusual value. Classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in Chicago, IL and its commercial zone, on the one hand, and, on the other, points in IL, KY, MN, WI, IN, IA, MO and MI, restricted to the transportation of traffic having a prior or subsequent movement by rail or water, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): QUAST, INC., 327 S. LaSalle Street, Chicago, IL 60604. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 147457 (Sub-TA), filed June 4, 1979. Applicant: KENNETH BASS, 916 Lakewood Drive, Milton, FL 35270. Representative: Ronald L. Stichweh, 727 Frank Nelson Building, Birmingham, AL 35203. *Feed,* Montgomery, AL to Milton and Pensacola, FL, for 180 days. Supporting shipper(s): Chavers Feed & Seed, P.O. Box 710, Milton, FL 32570. Escarosa Feed Company, Inc., 8449 Pensacola Blvd., Pensacola, FL 35204. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 147496 (Sub-3TA), filed August 22, 1979. Applicant: FINGER LAKES TRUCK BROKERAGE OF CANANDAIGUA, INC., P.O. Box 166, Route 21, Canandaigua, NY 14424. Representative: S. Michael Richards/ Raymond A. Richards, 44 North Ave., P.O. Box 225, Webster, NY 14580. Contract carrier-irregular routes. *(1) Foodstuffs (except frozen and except in bulk),* from Rochester, NY to all points in AR, KS, LA, OK, MO, TX, and all points east of the Mississippi River, and *(2) Materials, supplies and equipment used in the manufacture, sale and distribution of foodstuffs (except in bulk),* from all points in AR, KS, LA, OK, MO, TX, and all points east of the Mississippi River to Rochester, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bravo Macaroni Co., 86 Canal St., Rochester, NY 14601. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 147536 (Sub-12TA), filed August 9, 1979. Applicant: D. L. SITTON MOTOR LINES, INC., 3305 Range Line, P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (same as applicants). *Prepared animal feed, materials and supplies used in the manufacturing and distribution of prepared animal feed,* between Rolla, MO and points in AL, AZ, AR, CA, FL, GA, IL, IN, IA, KS, KY, MI, MN, NE, NM, OH, OK, TN, TX, and WI (restricted to shipments originating at or destined to the facilities of ConAgra, Inc.) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): ConAgra, Inc. Pet Foods Division, P.O. Box 938, Rolla, MO 65401. Send protests to: Vernon V. Coble, DS, I.C.C. 600 Fed. Bldg., 911 Walnut, Kansas City, MO 64106.

MC 147666 (Sub-2TA), filed July 9, 1979. Applicant: RIDGEWAY MOTOR COACH, INC., 7618 Windsor Mill Rd., Baltimore, MD 21207. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., Atlanta, GA 30326. *Passengers and their baggage in the same vehicle with passengers in charter operations* from Baltimore, MD and points in Baltimore County, MD to points in the United States (except Hawaii) and return for 180 days. Supporting shipper(s): Johnny Jones Tavern, 3301 Foster Ave., Baltimore, MD 21224. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 147707 (Sub-2TA), filed August 13, 1979. Applicant: TRANS-COPPER EXPRESS, CO., 512-514 State Fair Blvd., Syracuse, NY 13204. Representative: Kevin R. Clifford (same address as above). Contract carrier-irregular routes. *Candles and candles in glass, decorative candle items, raw materials, stearic acid and glass containers,* between Syracuse NY and points in OH, IL, MI, IN, KY, WI, MO and KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Muench Kreuzer Candle Co., 4575 Buckley Rd., Liverpool NY 13088. Send protest to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 147726 (Sub-TA), filed July 3, 1979. Applicant: O' CONNELL ENTERPRISES, INC., 1361 Pearl Street, Eugene, OR 97201. Representative: Larry J. Anderson, 1355 Oak, P.O. Box 848, Eugene, OR 97440. *Passengers and baggage for special and charter tours* from points in OR to points in the Continental U.S. and return for 180 days. A corresponding permanent will be filed upon grant of this TA. Supporting shippers: Associated: New York Life, 743 Armstrong, Eugene, OR 97404. Marist High School Foundation, 1900 Kingsley Road, Eugene, OR 97401. Tivoli Travel, 404 Ivy Street, Junction City, OR. Bridges Construction, 28245 Gimple Hill Rd., Eugene, OR 97402. Tax & Insurance Planning Services, 1840 Willamette, Suite 102, Eugene, OR 97401. Shadow Hills Country Club, P.O. Box 2529, Eugene, OR 97402. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 147727 (Sub-TA), filed July 2, 1979. Applicant: SCOTT DAVIS TRANSPORT, INC., 611 N. Front St., Yakima, WA 98901. Representative: Hochelle & Clausen, 534 S. W. 3rd Ave., Suite 301, Willamette Building, Portland, Oregon 97204. *Edible Oil, in bulk, in tank vehicles* from Portland, OR to Othello, Bellevue, Wheeler, Prosser, Spokane and Moses Lake, WA. 180 days. A corresponding permanent will be filed. Supporting Shipper(s): Palmco, Inc., 12005 N. Burgard Road, Portland, OR 97203. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 147796 (Sub-1TA), filed August 13, 1979. Applicant: ROBERT M. LOHAY d.b.a. Truck Central, 27661 Stanabury, Farmington Hills, MI 48018. Representative: Curtis L. Welty, 5215 Jolly Cedar Ct. Lansing, MI 48910. *Automotive parts, racks andiron and steel castings;* between Detroit, South Haven and Traverse City, MI, and their commercial zones, on the one hand and on the other Cleveland and Lima, OH and Louisville, KY and their commercial zones. For 180 days. Supporting shipper(s): Ford Motor Company, One Parklane Blvd., Parklane Towers-E, Suite 200, Dearborn, MI 48126. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, MI 48933.

MC 147827 (Sub-1TA), filed August 13, 1979. Applicant: JAMES McKEE, d.b.a. McKEE EXPRESS, 701 Melton, Jonesboro, AR 72401. Representative: Dennis Zolper, 216 E. Washington, Jonesboro, AR 72401. Contract carrier over irregular routes. *Newsprint* in bulk, between facilities of Newsweek, Inc. at Jonesboro, AR on the one hand, and on the other, Memphis International Airport at Memphis, TN, restricted to shipments having a prior or subsequent movement by air, for 180 days. Underlying ETA seeks 90 day authority. Supporting shipper(s): Newsweek, Inc., 4708 Krueger Dr., Jonesboro, AR 72401. Send protests to: William H. Land, DS., 3108 Federal Bldg., Little Rock, AR 72201.

MC 147837 (Sub-1TA), filed August 10, 1979. Applicant: LIMA, INC., Route 4, Marion, IL 26959. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Lumber, plywood and paneling,* from points in LA on the north of U.S. Interstate 20 and points in AR on and south of U.S. Interstate 40 to Marion, IL and Harrisburg, IL for 180 days. Supporting shipper(s): Marion Metal & Roofing Company, 703 South Court Street, Marion, IL 62959. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 147867 (Sub-TA), filed June 14, 1979. Applicant: MIDSTATES REFRIGERATED EXPRESS, INC., P.O. Box 420, East Chicago, IN 46312. Representative: Stephen H. Loeb, Suite 200, 205 W. Touhy Avenue, Park Pidge, IL 60068. *Foodstuffs,* except in bulk, in vehicles equipped with mechanical refrigeration between the facilities of U.S. Cold Storage Co. at Lyons, IL on the one hand, and on the other, points in PA on and West of Interstate Highway 79, IN, MI, OH, KY, and St. Louis, MO, and points in its commercial zone for 180 days. An underlying ETA was granted 90 days authority. Supporting shipper(s): U.S. Cold Storage, 8424 West 47th, Lyons IL 60534. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, Illinois 60604.

MC 147937 (Sub-1TA), filed August 22, 1979. Applicant: LUXOR TOURS INC., 14 Hayes Street, Elmsford, N.Y. 10523. Representative: John Catterson, Esq., Bonoy & Schloss, 6 East 43rd Street, New York, New York 10017. Common: Irregular routes. Passenger and disabled passengers in special and charter operations in vans and wheel chair vehicles, limited to the number of 14 or less, not including the driver. Supporting shipper(s): Twenty-five supporting statements. Send protests to: Maria B. Kejss, ICC, 26 Federal Plaza, New York, New York 10007, Room 1807.

MC 147996 (Sub-1TA), filed August 15, 1979. Applicant: BRUCE WARD d.b.a. BRUCE WARD TRUCKING COMPANY, P.O. Box 105, Fort Calhoun, NE 68023. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Section A & C of Appendix I to the Report in Descriptions in Motor Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from the facilities of Dugdale Packing Company at Norfolk, NE to points in IL, IA, KS, MN, MO, SD, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dugdale Packing Company, P.O. Box 169, Norfolk, NE 68701. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 147997 (Sub-1TA), filed August 21, 1979. Applicant: W.T.S. OF MICHIGAN, INC., 902 Avenue N., Grand Prairie, TX 75050. Representative: E. Larry Wells, Winkle, Wells & Stafford, P.O. Box 45538, Dallas, TX 75245. Contract carrier, irregular routes, *Uncrated Xerox copying, duplicating and word processing machines and parts, materials, and supplies as used in the manufacture, installation or sale of such commodities* from the facilities of the Xerox Corporation at or near Livonia, MI to the counties of Defiance, Erie, Fulton, Hancock, Henry, Huron, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, and Wood, OH for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Xerox Corporation, 3000 Des Plaines Avenue, Des Plaines, IL 60018. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 148006 (Sub-1TA), filed August 29, 1979. Applicant: DON AND SANDRA HARSHBARGER, d.b.a. Sandon Trucking, P.O. Box 1347, Winnemucca, NV 89445. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. Common carrier, regular routes, *general commodities, except household goods, commodites in bulk, commodities in bulk in tank vehicles,* between Reno, NV and Wells, NV via Interstate 80, serving all intermediate points, and serving off-route points within 15 miles of Interstate 80, for 180 days. Interlining requested at Reno, Wells and Elko, NV. Supporting shipper(s): There are approximately 36 shippers. Their statements may be examined at the office below or at Headquarters. Send protests to: DS W. J. Huetig, ICC, 203 Federal Bldg., Carson City, NV 89701.

MC 148027 (Sub-1TA), filed August 23, 1979. Applicant: MARVIN KLEVBERG, Northwood, ND 58267. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. *Prestressed concrete products,* from the facilities of Concrete, Inc., at Grand Forks, ND, to points in MN and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Concrete, Inc., P.O. Box 908, Grand Forks, ND 58201. Send protests to: H. E. Farsdale, DS, ICC, Room 268, Fed. Bldg., 657 2nd Avenue North, Fargo, ND 58102.

MC 148096 (Sub-TA), filed July 6, 1979. Applicant: RON SMITH TRUCKING, INC., Rural Route 3, Arcola, IL 61910. Representative: Douglas Brown, The INB Center, Suite 555, Springfield, IL 62701. *Contract carrier:* irregular routes; *Lime,* from St. Genevieve, MO to Vermilion County, IL for 180 days. An underlying ETA seeks 90 days authority for the account of Illinois Power Co. Supporting shipper(s): Illinois Power Co., 500 S. 27th Street, Decatur, IL 62525. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 148126 (Sub-TA), filed August 14, 1979. Applicant: E. W. L. TRUCKING, INC., 2055 Railroad Avenue, Glenview, IL 60025. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *Contract carrier:* irregular routes: *wrought iron pipe;* from the facilities of Unarco-Leavitt located in Hammond, IN; Chicago, Blue Island and Evanston, IL to points in MN and WI for 180 days, for the account of Unarco-Leavitt, Divison of Unarco Ind., Inc. Supporting shipper(s): Unarco-Leavitt, Divison of Unarco Ind., Inc., 1717 West 115th Street, Chicago, IL 60643. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Chicago, IL 60604.

MC 148127 (Sub-TA), filed August 20, 1979. Applicant: LINEHAUL EXPRESS CORPORATION, P.O. Box 5078, Manchester, NH 03108. Representative: Gregg M. Lewis, 23½ Monroe St., Concord, NH 03301. *Self-propelled vehicles over 14,000 lbs. GVW and their parts and acessories,* between points in NH and NY; on the one hand, and, on the other, points in the United States, for 180 days. Supporting shipper(s): H.P. Enterprises, Inc., California St., W. Swanzey, NH 03469. H.P. Rental and Leasing, Inc., Rt. 21, Troy Rd., Keene, NH 03431 Peterbilt of New Hampshire, Inc., 143 Frontage Rd., Manchester, NH 03103. Send protests to: Ross J. Seymour, DS, ICC, Rm. 3, 6 Loudon Rd., Concord, NH 03301.

MC 148386 (Sub-4TA), filed August 22, 1979. Applicant: NATIONAL RETAIL TRANSPORTATION, INC., Building A, 10 E. Oregon Ave., Philadelphia, PA 19148. Representative: Richard Rueda, 133 N. 4th St., Philadelphia, PA 19106. *Such Commodities as are dealt in or used by retail department stores (except in bulk)* between the facilities of Walsh Trucking and Consolidating Co., Inc., at North Bergen, NJ, and the New York, NY Commercial Zone, on the one hand, and on the other, Philadelphia and Pittsburgh, PA, Richmond, VA, Charlotte, NC, Memphis, TN, Atlanta, GA, Jacksonville and Miami, FL, New Orleans, LA, Dallas and Houston, TX, Cincinnati, Cleveland and Columbus, OH, Indianapolis, IN, Detroit, MI, Chicago, IL, Milwaukee, WI, Minneapolis, MN, St. Louis, MO, Omaha, NE, Denver, CO, San Francisco and Los Angeles, CA, Portland, OR, and Seattle, WA and their respective commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Walsh Trucking & Consolidating Co., Inc., 2820 16th St., North Bergen, NJ 07047. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 145437 (Sub-3TA), filed June 13, 1979. Applicant: JWI TRUCKING, INC., 8100 No. Teutonia Ave., Milwaukee, WI 53209. Representative: Michael Wyngaard, 150 E. Gilman St., Milwaukee, WI 53209. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: wearing apparel, from Kenosha, WI, to points in California, and materials, equipment and supplies used in the manufacture, sale and distribution of wearing apparel, from Charlotte and Maiden, NC and Jefferson, SC, to Kenosha, WI, under a contract with Jockey International, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jockey International, Inc., 2300 60th St., Kenosha, WI 53140. The above described request for authority was published in the Federal Register July 27, 1979, but the origins of Charlotte and Maiden were inadvertently shown as being located in South Carolina instead of North Carolina. The entire authority, as corrected, was granted by the Commission, Motor Carrier Board, by decision entered September 24, 1979. Any interested party may file a petition for reconsideration with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested party may file and serve a reply thereto.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-31673 Filed 10-12-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 200
Monday, October 15, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-1947-79

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. (Eastern Time), Tuesday, October 9, 1979.

CHANGE IN THE MEETING: The following matters were added to the agenda for the open portion of the meeting:

Report to the Commission on the Combined Federal Campaign for 1980. Sole Source Contract for computer analysis in connection with a court case.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no early announcement was possible.

In favor of Change: Eleanor Holmes Norton, Chair; Ethel Bent Walsh, Commissioner; and J. Clay Smith, Jr., Commissioner.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued October 9, 1979.

[S-6570 Filed 10-10-79; 4:05 pm]

BILLING CODE 6570-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, October 16, 1979.

PLACE: Commission Conference Room, 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

MATTERS TO BE CONSIDERED:

1. Proposed revision of OMB interim guidelines regarding the collection of information on race, ethnic background, age and sex in applications made by individuals for benefits under Federal programs.

2. Interpretive guidelines on employment discrimination and hazardous substances.

3. Freedom of Information Act Appeal No. 79-8-FOIA-242, concerning a request by a university for copies of several age discrimination complaints which were filed against the.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued October 9, 1979.

[S-2004-79 Filed 10-10-79; 4:05 pm]

BILLING CODE 6570-06-M

3

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, October 10, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

General—2—Title: Lincoln Telephone and Telegraph Company's Application for Review of NCCC's Section 214 Supplemental Facilities Application to lease additional channels between Lincoln and Omaha, Nebraska. Summary: In March, 1978 NCCC filed a Section 214 Application requesting authority to supplement existing facilities. On July 10, 1978 LT&T filed a Petition to Deny the grant. The Common Carrier Bureau declared the Petition moot. On August 30, 1978 LT&T filed its Application for Review. The Commission is considering the following: 1) when the application was effective; 2) whether the Petition to Deny was properly dismissed; 3) whether the application was difficult; and 4) whether economic harm would result to LT&T if the grant is allowed.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: October 9, 1979.

[S-2007-79 Filed 10-11-79; 12:00 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, October 16, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Title: Network Inquiry Special Staff Preliminary Report. Summary: Preliminary reports are released covering the following topics: 1. Network-affiliate relationship in television. 2. FCC jurisdiction over the networks. 3. FCC rules regulating networking. 4. History of the proceedings leading to the adoption of the Prime Time Access Rule. 5. Structure and business activities of the parent corporations of the major television networks. 6. History of the origin of the television networks. Deadlines for comments and reply comments concerning these reports, and for comments on the next phase of Inquiry activities are established. *See* Further Notice of Inquiry, Docket 21049, 69 F.C.C. 2d 1524 (1978).

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: October 10, 1979.

[S-2008-79 Filed 10-11-79; 12:00 pm]

BILLING CODE 6712-01-M

5

October 10, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: October 17, 1979, 10 a.m.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8500.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—343rd Meeting, October 17, 1979, Regular Meeting (10 a.m.)

CAP–1. Docket Nos. ER79–612, ER79–613, ER79–614 and ER79–651, Iowa Power & Light Co.
CAP–2. Docket Nos. ER76–149 and E–9537, Public Service Co. of Indiana, Inc.
CAP–3. Docket No. ER78–517, The Connecticut Light & Power Co.
CAP–4. Docket No. ER76–205, Southern California Edison Co.
CAP–5. Docket Nos. ER78–70 and ER–71, Pennsylvania Power & Light Co.
CAP–6. Docket No. ER77–578, Kansas Gas & Electric Co.
CAP–7. Docket No. ER79–62, Gulf States Utilities Co.

Gas Agenda—343rd Meeting, October 17, 1979, Regular Meeting

CAG–1. Docket No. RP75–8 (PGA 79–4), Commercial Pipeline Co., Inc.
CAG–2. Docket No. RP73–8 (PGA No. 79–4a), North Penn Gas Co.
CAG–3. Docket No. RP72–156 (PGA 79–2, DCA79–2), Texas Gas Transmission Corp.
CAG–4. Docket Nos. RP76–136 and RP77–26, Transcontinental Gas Pipe Line Corp.
CAG–5. Docket Nos. RP72–142 and RP76–135 (PGA 78–4 and AB78–1), Cities Service Gas Co.
CAG–6. Docket No. RI78–18, Natural Gas Pipeline Co. of America.
CAG–7. Docket No. RI76–8, Pennzoil Producing Co., Docket No. RI76–10, Shell Oil Co.
CAG–8. Docket No. RI66–273, Southwestern Refining Co., Inc. (Operator), et al.
CAG–9. Rate Schedule No. 45, The Superior Oil Co.
CAG–10. Docket No. G–7241, Southland Royalty Co., et al. Docket No. CI78–384, Cities Service Co. Docket No. CI78–990, Marathon Oil Co. Docket No. CI78–996, Pennzoil Producing Co., et al. Docket Nos. CI79–558 and CI79–561, Pogo Producing Co., et al. Docket No. CI79–564, Pennzoil Louisiana and Texas Offshore, Inc. Docket Nos. CI79–567 and CI79–568, Pennzoil Oil & Gas, Inc. Docket No. CI79–577, Aminoil U.S.A., Inc. Docket No. CI79–573, Quintana Oil & Gas Corp. Docket No. CI79–614, CNG Producing Co. Docket No. CI78–559, Phillips Petroleum Co. Docket No. CI78–988, Southland Royalty Co. Docket No. CI78–1000, Cities Service Co. Docket No. CI79–172, et al., General American Oil Co. of Texas, et al. Docket No. CI79–194, Sabine Production Co. Docket No. CI79–574, Quintana Offshore, Inc. Docket No. CI61–636, Continental Oil Co. (Operator), et al. Docket No. CI79–429, Pennzoil Oil & Gas, Inc. Docket No. CI79–430, Pogo Producing Co. Docket No. CI79–609, Tenneco Oil Co. Docket No. CI78–1124, Terra Resources, Inc.
CAG–11. Docket No. CP79–300, Southern Natural Gas Co.
CAG–12. Docket No. CP79–283, The Inland Gas Co., Inc.
CAG–13. Docket No. CP79–467, Columbia Gas Transmission Corp.
CAG–14. Docket No. CP77–393, Mid Louisiana Gas Co. Docket No. CP77–430, Texas Eastern Transmission Corp. Docket No. CP77–469, Transcontinental Gas Pipe Line Corp.
CAG–15. Docket No. CP79–335, El Paso Natural Gas Co.
CAG–16. Docket No. CP79–437, Northern Natural Gas Co.
CAG–17. Docket No. CP79–420, Peoples Natural Gas, Divison of Northern Natural Gas Co., Applicant and Cities Service Gas Co., Respondent.
CAG–18. Docket No. CP78–256, Algonquin LNG, Inc. Docket Nos. CP73–139 and CP73–197, Algonquin Gas Transmission Co.

Power Agenda, 343rd Meeting, October 17, 1979, Regular Meeting

I. Licensed project matters

P–1. Project No. 176, Escondido Mutual Water Co.; city of Escondido, Calif.; and Vista Irrigation District Docket No. E–7562, Secretary of the Interior acting in his capacity for the Rincon, La Jola, and San Pasqual Lands of Mission Indians v. Escondido Mutual Water Company and city of Escondido, Calif., Docket No. E–7655, Vista Irrigation District, Project No. 559, San Diego Gas & Electric Co.

II. Electric rate matters

ER–1. Docket No. ER79–616, Northern States Power Co.
ER–2. Docket No. ER78–342, Florida Power & Light Co.
ER–3. Docket No. EL79–13, Iowa Power & Light Co.
ER–4. Docket No. ID–1758, Charles T. Fisher, III

Miscellaneous Agenda—343rd Meeting October 17, 1979, Regular Meeting

M–1. Reserved.
M–2. Reserved.
M–3(A). Docket No. RM79–54, Small Power Production & Congeneration Facilities—Qualified States.
M–3(B). Docket No. RM79–55, Small Power Production & Cogeneration Rates and Exemptions.
M–4. Docket No. RM79–52, Continuance of Service.
M–5. Docket No. RM79–80, Price Discrimination and Anti-Competitive Effect—Substantive Rule.
M–6. Docket No. RM79–79, Price Squeeze—Procedural Rules.
M–7. Docket No. RM79–38, Discontinuation of the Use of Certain FERC Forms.
M–8. Docket No. RM–80–, Discontinuation of Collection of additional FERC Forms.
M–9. Docket No. RM80–, Statement on Distributor Access to Outer Continental Shelf Gas.
M–10. Docket No. RM79–72, Final Rule Amending Regulations on Natural Gas From New, Onshore Production Wells and Amendments in Secton 274.204 of the Interim Regulations.
M–11. Docket No. RM79–73, Final Rule Amending Subpart B of Part 273 on Stripper Well natural Gas and Amendments to Section 274.206 of the Interim Regulations.
M–12. Docket No. OP79–69, Grace Petroleum Corp. State Docket Nos. 4–6–792E PD and 3–2–7912 PM FERC 3079–9658 and 79–9659.
M–13. Docket No. RM79–19, Treatment of Certain Production-Related Costs for Natural Gas to be Sold and Transported through the Alaska Natural Gas Transportation System.

Gas Agenda—343rd Meeting October 17, 1979, Regular Meeting

I. Pipeline rate matters

RP–1. Docket No. RP78–10 and RP77–13 (PGA77–2A), Kansas Nebraska-Natural Gas Co., Inc.
RP–2. Docket Nos. RP73–107, RP74–90, RP73–91, RP77–7, RP77–140, RP78–52, and RP79–22, Consolidated Gas Supply Corp., Docket No. CP71–290, Consolidated System Lng Co.
RP–3. Docket No. OR78–1, Trans-Alaska Pipeline System.

II Producer matters

CI–1. Docket No. AR64–2, et al., Area Rate Proceding, et al., (Texas Gulf Coast Area).
CI–2. Docket No. RI65, Texas International Petroleum Corp.

III. Pipeline certificate matters

CP–1. Docket No. TC79–137, Northeast Alaska Pipeline Corp.
CP–2. Docket No. TC79–136, Nucor Steel-Nebraska, a Division of Nucor Corp.
CP–3. Docket Nos. CP76–313, et al., National Fuel Gas Supply Corp., et al.
CP–4. Docket No. CP79–289, Michigan Wisconsin Pipe Line Co.
CP–5. Docket No. CP78–123, (Phase 3), Northern Alaska Natural Gas Co.

Kenneth F. Plumb,
Secretary.

[S–2005–79 Filed 10–11–79; 10:43 am]
BILLING CODE 6450–01–M

6

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, FR Page 57295, October 4, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., October 11, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202–377–6677).

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting:

Loan Register.

No. 279, October 11, 1979.

[S–2006–79 Filed 10–11–79; 12:00 pm]
BILLING CODE 6720–01–M

7

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., October 18, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202–377–6677).

MATTERS TO BE CONSIDERED:

Preliminary Application for Conversion to Federal Mutual Charter—Durant Savings and Loan Association, Durant, Oklahoma.

Preliminary Application for Conversion to Federal Mutual Charter—The American Savings and Loan Association, Anadarko, Oklahoma

Preliminary Application for Conversion to Federal Mutual Charter—Northwest Savings and Loan Association of Woodward, Woodward, Oklahoma

Request for Commitment to Insure Accounts—First Summit Savings and Loan Association, Breckenridge, Colorado

Application for Insurance of Accounts—Village Savings Association, West University Place, Texas

Calculation of Earnings on Savings Accounts

Application for Permission to Organize a Federal Savings and Loan Association—Thomas Sung, et al., New York, New York

Applications for Permission to Organize a Federal Savings and Loan Association—Considered Concurrently—Jack Sutherlin, et al., Covington, Louisiana AND Harold J. Hanson, et al., Covington, Louisiana

Application for Waiver of Liquidity Deficiency Penalty—Hopkins Savings and Loan Association, Milwaukee, Wisconsin

Request for Waiver of Insurance Regulation 563.9—Equitable Savings and Loan Association, Portland, Oregon

Proposed Amendment to Section 5 of Charter S—Skokie Federal Savings and Loan Association, Skokie, Illinois.

No. 280, October 11, 1979.

[S–2010–79 Filed 10–11–79; 3:24 pm]

BILLING CODE 6720–01–M

8

FEDERAL RESERVE SYSTEM: (Board of Governors)

TIME AND DATE: 11 a.m., Friday, October 19, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed installation of an automatic fire suppressant system by the Federal Reserve Bank of New York. The contract, if authorized, would be effected through a competitive bidding process.

2. Proposed renovation of offices by the Federal Reserve Bank of Kansas City. The contract, if authorized, would be effected through a competitive bidding process.

3. Proposed currency transportation contract, to be handled under competitive bidding.

4. Federal Reserve Bank officer salary administration.

5. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

6. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated October 11, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–2013–79 Filed 10–11–79; 3:48 pm]

BILLING CODE 6210–01–M

9

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, October 17, 1979.

PLACE: Hearing Room "A", Interstate Commerce Commission Building, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open Special Conference on Short Notice.

MATTER TO BE DISCUSSED: Report of bus industry study group.

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director; Office of Communications, Telephone: (202) 275–7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

October 11, 1979.

[S–2009–79 Filed 10–11–79; 12:56 pm]

BILLING CODE 7035–01–M

10

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 2 p.m., Thursday, October 18, 1979.

PLACE: 2025 M Steeet, NW., Washington, D.C., 4th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Amendments to Part 708, NCUA Rules and Regulations dealing with mergers.

2. Precedure for handling unsolicited proposals.

3. Revisions to Part 742 NCUA Rules and Regulations dealing with Liquidity Reserves.

4. Applications for charters, amendments to charters, bylaw amendments, mergers, conversions and insurance as may be pending at that time.

5. Review of Central Liquidity Facility lending rates.

RECESS: 2:45 p.m.

TIME AND DATE: 3 p.m., Thursday, October 18, 1979.

PLACE: 2025 M Steeet, NW., Washington, D.C., 4th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act in order to prevent their closing. Closed pursuant to exemptions (8) and (9)(A)(ii).

2. Administrative Actions. Closed pursuant to exemptions (8), (9)(A)(ii), and (10).

CONTRACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 254–9800.

[S–2011–79 Filed 10–11–79; 3:24 pm]

BILLING CODE 7535–01–M

11

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9:30 a.m., Monday, October 15, 1979. [NM–79–37]

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED:

A majority of the Board has determined by recorded vote that the business of the Board requires that the following item be discussed on this date and that no earlier announcement was possible:

Request for approval of en banc public hearing on commuter aviation safety.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

October 11, 1979.

[S–2012–79 Filed 10–11–79; 3:48 pm]

BILLING CODE 4910–58–M

12

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m. on October 17, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: October 9, 1979.

[S–2014–79 Filed 10–11–79; 3:59 pm]

BILLING CODE 7600–01–M

13

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: October 25, 1979 at 10 a.m.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634–4015.

Dated: October 9, 1979.

[S-2015-79 Filed 10-11-79; 3:59 pm]

BILLING CODE 7600-01-M

Federal Register

Monday
October 15, 1979

Part II

International Trade Commission

Procedures for the Conduct of Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Procedures for the Conduct of Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: United States International Trade Commission.

ACTION: Proposed rules.

SUMMARY: These proposed rules set forth procedures for the conduct of Commission investigations under section 303 and Title VII of the Tariff Act of 1930 (19 U.S.C. 1303 and 2501 et seq.), Title V of the Tariff Act of 1930 (19 U.S.C. 1516A), and sections 102 through 107 of the Trade Agreements Act of 1979 (Pub. Law 96–39, 93 Stat. 144).

DATE: Comments on the proposed rules should be submitted on or before November 29, 1979.

ADDRESS: Send Comments to the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Lang, Esq. or Edward M. Lebow, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C., telephone (202) 523–0143 or 523–0486, respectively.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979 (Pub. Law 96–39, 93 Stat. 144) approves and implements trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations. Contingent upon United States acceptance by January 1, 1980, of the negotiated agreements relating to subsidies and contervailing measures and to antidumping measures, the Trade Agreements Act will bring about extensive changes in the U.S. countervailing duty and antidumping duty laws, primarily through amendment of the Tariff Act of 1930.

These proposed rules would amend Part 201, repeal existing Part 207 and establish a new Part 207 of the Commission rules to provide procedures for the conduct of Commission antidumping and countervailing duty investigations under the changes required by the Trade Agreements Act of 1979, cited above.

A section-by-section analysis of the proposed rules follows.

Section 207.1 *Applicability of part.*

This introductory Rule makes the procedures set forth in Part 207 applicable to all investigations conducted by the Commission under section 303 or Title VII of the Tariff Act of 1930 (the Act). The inclusion of section 303 investigations is required by section 103 of the Trade Agreements Act of 1979, which makes the procedures and findings with respect to countervailing duty investigations set forth in Title VII of the Act applicable to merchandise imported from any nation which is not a "country under the Agreement" (defined in section 701(b) of the Act) and which is free of duty.

Subpart A—General Provisions

Subpart A contains rules applicable to all Commission investigations under section 303 and title VII of the Act and sections 102 through 107 and Title X of the Trade Agreements Act.

Section 207.2 *Definitions applicable in Part 207.*

This Rule defines certain terms used repeatedly in Part 207.

(a) The term "the Act" is defined to mean the Tariff Act of 1930 (19 U.S.C. 1202 et. seq.).

(b) The definition of "administering authority" is taken directly from section 777(1) of the Act. Section 103 of the Trade Agreements Act, amending Section 303(b) of the Act, provides that the duty imposed by section 303 is to be administered in accordance with Title VII (sec. 771(1)).

(c) The definition of "country under the Agreement" is taken directly from section 701(b) of the Act.

(d) The term "Director" is defined to mean the Commission's Director of Operations or someone appointed to act in that capacity, or, if there is neither, a person designated by the Chairman to fulfill the responsibilities of the Director with respect to investigations under this part.

(e) The definition of "effective date" reflects the provisions of section 107 of the Trade Agreements Act of 1979.

(f) The definition of "ex parte meeting" is derived from section 777(a)(3) of the Act. The Commission intends that only the Director of Operations will make a "final recommendation" to the Commission within the meaning of section 777(a)(3)(B) of the Act.

(g) The term "injury" is defined to mean material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States. The definition is intended to allow shorthand reference throughout Part 207 to the three types of harm at which section 303 and Title VII of the Act are directed.

(h) The definition of "interested party" is taken directly from section 771(9) of the Act.

(i) The term "Party" is defined to include two classes of persons: (1) interested parties who have filed an appearance with the Commission under Rule 201.13, and (2) any other person who, after manifesting a proper interest in the subject matter of the Commission investigation, has filed such an appearance. A person who is not an interested party and who chooses to become a party to an investigation will receive copies of all documents served pursuant to Rule 207.3, However, such a person will also be required to comply with the obligations of a party, including service of documents under Rule 207.3 and submission of a prehearing statement under Rule 207.22..

(j) The definition of "record" reflects the definition of the record for purposes of judicial review contained in section 516A(b)(2)(A) of the Act. The Commission is of the view that the term "information" in section 516A(b)(2)(A)(i) includes only information that goes to the facts under investigation, and not to staff documents relating to administrative deadlines, travel arrangements, guidelines for conducting investigations and similar matters. The Commission intends, therefore, that such documents not be made a part of the record.

(k) The term "Rule" is defined to mean a section of the Commission's Rules of Practice and Procedure.

Section 207.3 *Service of documents.*

This Rule establishes requirements for the service of documents on parties to an investigation. Any party submitting a document for inclusion in the record is required to serve a copy of each such document on all other parties to the investigation. This Rule also provides that all documents, except transcripts, placed on the record by the Commission staff must be served on each party to the investigation. The Director of Operations will be authorized to serve many such documents directly.

Section 207.4 *The record.*

This Rule establishes requirements for the maintenance of the record of Commission proceedings. The record will be divided into a public portion and a nonpublic portion consisting of documents which contain business confidential or privileged information.

The Director is authorized by this Rule to conduct such audits as he deems

necessary. The absence of an audit will be presumed to indicate that the Director decided that no audit was necessary or desirable.

Materials received from the administering authority will be placed on the record and designated public or nonpublic in conformity with the designation assigned to them by the administering authority. Requests for access to or release of materials originating with the administering authority will be referred to that agency for its advice; however, the Secretary will make the final decision as to whether the material in question will be released.

Section 207.5 *Ex parte meetings.*

This Rule establishes requirements for the maintenance and content of ex parte meeting records as required by section 777(a)(3) of the Act. The Rule provides that a record of each such meeting shall be placed in the record, and that each meeting record shall include the identity of the persons present, the date, time and place of the meeting, and a summary of the matters discussed or submitted.

Section 207.6 *Reports of progress of investigation.*

This Rule establishes requirements for the Commission Secretary to inform the parties to an investigation of the progress of that investigation. Such reports are required "from time to time upon request" by section 777(a)(2) of the Act. To prevent an undue burden on the Commission staff, the section provides that no progress report will be furnished (1) less than 30 days after notice of an investigation appears in the Federal Register, or (2) less than 30 days after issuance of the previous report on the progress of the same investigation. Reports will be limited to a statement of the official actions, if any, taken by the Commission since the last such report. It is contemplated that the Secretary on his own initiative will issue monthly reports updating the progress of all investigations over 30 days old.

Section 207.7 *Limited disclosure of certain confidential information under a protective order.*

(a) *In general.* This subsection establishes procedues for the disclosure of domestic price and cost information under protective order to representatives of interested parties who are parties to the investigation. Disclosure of any business information under protective order is authorized by section 777(c)(1) of the Act, but disclosure of cost of production and domestic price information may be required under court order pursuant to section 777(c)(2) of the Act. In fact, the Commission rarely, if ever, collects domestice cost of production information, and it only collects price information relevant to the products in question. The term "domestice price" as used in this Rule does not mean the price of an imported product in the United States. The Secretary will release domestice price and cost information under the protective order. Decisions of the Secretary denying requests for release of such information would be directly appealable to the Customs Court.

(b) *Protective order.* This subsection establishes the conditions under which domestic price and cost of production may be released.

(c) *Final disposition of material released under protective order.* This subsection establishes procedures and requirements for the final disposition of material released under protective order. At the completion of an investigation (or at such earlier date as the Secretary deems appropriate), all copies of the released material must be returned to the Secretary. Returned materials must be accompanied by a certificate from the person to whom the release was made attesting to his good faith effort to ascertain that no additional copies have been made available to any person to whom disclosure was not specifically authorized.

(d) *Sanctions.* This subsection establishes sanctions for breach of a Commission protective order. Section 777(c)(1)(B) of the Act authorizes the Commission to establish such sanctions for breach of protective order as it determines to be appropriate. The sanctions contained in this subsection include being barred from practice before the Commission, referral of any breach to the U.S. Attorney and to the ethics panel of the appropriate professional association, and striking from the record any information or briefs submitted by the offender. This subsection accords with current Commission practice under Rule 201.15.

(e) *Sanction procedures.* This subsection establishes the right of any person accused of breaching a protective order to be heard by the Commission before a determination regarding sanctions is made.

Section 207.8 *Questionnaires to have the force of subpoenas; subpoena enforcement.*

This Rule provides that Commission questionnaires have the force of a subpoena, provided they are labeled as subpoenas and signed by a Commissioner. In the event any person refuses or is unable to produce the information requested in such a questionnaire in a timely fashion, the Commission may (1) in accordance with section 776(b) of the Act use the best information otherwise available in making its determination, (2) seek judicial enforcement of its subpoena under 19 U.S.C. 1333, or (3) take any other actions it deems necessary and appropriate, including waiver of any time limits set forth in Part 207 (*see Usery* v. *Whitten Machine Works, Inc.*, 554 F.2d 498 (5th Cir. 1977)).

Section 207.9 *Affirmative determinations by divided Commission.*

This rule establishes a voting rule for investigations under Part 207 to apply in instances where the Commissioners voting are evenly divided regarding whether a determination should be affirmative or negative. The Rule is intended to implement and clarify section 771(11) of the Act.

The Rule provides that, if the Commissions voting on a determination required under section 303 or Title VII of the Act are evenly divided regarding whether the determination should be affirmative or negative, the Commission will be deemed to have made an affirmative determination. In order to conform to what the Commission believes to have been the intent of Congress, this section has been drafted to cover all Commission determinations under Part 207 wherein a Commissioner may vote affirmatively in more than one way. Thus, when the issue before the Commission is to determine whether there is (sections 705 and 735 of the Act,) whether there would be (section 104(b) of the Trade Agreements Act), or whether there is a reasonable indication of (sections 702 and 732 of the Act) either (1) material injury, (2) threat of material injury, or (3) material retardation, an affirmative vote on any of the issues will be treated as a vote that the Commission's determination should be affirmative.

Subpart B—Investigations of Reasonable Indication of Material Injury, Threat of Material Injury, or Material Retardation

Subpart B provides a procedural framework for preliminary investigations under section 303 and Title VII of the Tariff Act of 1930, as amended, viz., the filing of petitions, the amendment of petitions, the conduct of preliminary investigations by the Commission's Director of Operations, the submission of written comments by persons interested in the subject matter of investigations, the conduct of

conferences among interested parties and the staff of the Director of Operations, the submission of the recommendation of the Director to the Commission, the determination by the Commission as to whether there is a reasonable indication of injury, and the issuance of appropriate notification to interested parties and to the public through the Federal Register of Commission actions.

Section 207.10 *Filing of petition with Commission.*

Rule 207.10 implements the requirement in sections 702(b) and 732(b) of the Act for simultaneous filings of countervailing duty and antidumping investigation petitions with the administering authority and the Commission.

Section Rule 207.11 *Contents of petition.*

This Rule restates the requirements for a petition set forth in sections 702(b) and 732(b) of the Act. Reference is made to the factors relating to injury which will be considered by the Commission pursuant to section 771(7) of the Act and Rule 207.26 with the expectation that the petitioner will include information relevant to these issues. The Rule also requires a petitioner alleging critical circumstances to provide reasonably available information relevant to the additional findings which the Commission must make pursuant to sections 705(b)(4)(A) and 735(b)(4)(A) of the Act in the event critical circumstances are found by the administering authority.

Section 207.12 *Cooperation with administering authority; informal inquiry.*

This Rule provides that the authority to conduct investigations of reasonable indication of material injury is delegated from the Commssion to the Director of Operations. The delegation includes the exercise of the Director's discretion as to how best to conduct each such investigation.

The decision to delegate the conduct of such investigations from the Commission to the Director is based upon the Commission's administrative experience. Currently, the Commission administers 30-day investigations in a limited number of investigations under section 201(c)(2) of the Antidumping Act, 1921. The use of questionnaires and public hearings presided over by the full Commission in these investigations has been extremely taxing on the resources of the agency. The agency's resources are not great enough to conduct such proceedings in both preliminary and final investigations, especially in view of the anticipated caseload of new and transitional investigations. This Rule provides that information adduced during the preliminary investigations be placed on the administrative record of the investigation.

This Rule also authorizes the Director to cooperate with the administering authority after a petition is filed to assist the administering authority with its determination under section 702(c) or 732(c) of the Act regarding whether a petition alleges the elements necessary for the imposition of a duty under section 701(a) or 731(a) of the Act. The Director will also cooperate with the administering authority with respect to proposed amendments to petitions. It is the intention of the Commission that this Rule satisfy its statutory obligation under sections 702(b) and 732(b) of the Act concerning amendments to petitions. Notwithstanding any assistance provided by the Director to the administering authority under this Rule, all determinations under sections 702(c) and 732(c) are ultimately to be made by the administering authority.

Section 207.13 *Negative petition determination.*

This Rule implements sections 702(c) and 732(c) of the Act, which provide that in those cases in which the administering authority determines that the petition does not allege the elements necessary for the imposition of a countervailing or antidumping duty, as the case may be, and accordingly, the petitioned-for investigation is dismissed, the Commission shall cease its simultaneous investigation and provide notice of the cessation.

Section 207.14 *Notice of investigation of reasonable indication of injury.*

This Rule is derived from sections 702(d) and 732(d) of the Act. It provides that, upon receipt of notice from the administering authority that the authority has determined that a petition does allege the elements necessary for the imposition of a countervailing or an antidumping duty, as the case may be, or that the administering authority has initiated an investigation based on information available to it, the Commission shall institute a formal investigation to determine whether there is reasonable indication of injury under section 703(a) or 733(a) of the Act and publish a notice to that effect in the Federal Register.

Section 207.15 *Written statements, conference, and further investigation.*

This 207.15 provides that within four days of publication in the Federal Register of the Commission's notice instituting an investigation, any person may submit to the Commission a written statement of information pertinent to the subject matter of the investigation. The Rule also contemplates that the Director of Operations will conduct such investigative activities as are necessary to obtain information within the time available. Although it does not appear to be feasible to schedule formal hearings before the Commission within the available time, joint conferences may be scheduled for parties if the Director deems them appropriate. Conferences will be held after public notice. The transcripts of such conferences as well as other information adduced through the investigative activities of the Director will be placed on the administrative record of the investigation.

Section 207.16 *Recommendation of Director.*

This Rule requires the Director of Operations to prepare a recommendation to the Commission based upon the record of the investigation of reasonable indication of injury. The recommendation must be submitted to the Commission within ten days of the date of publication in the Federal Register of commencement of an investigation but not more than thirty-five (35) days after the date the petition was filed under Rule 207.10.

Section 207.17 *Determination by Commission of reasonable indication of injury.*

This Rule provides that, in all cases other than those in which the administering authority dismisses the petition, the Commission shall make a determination, based upon the best information before it at the time, of whether there is reasonable indication of injury by reason of imports of merchandise which is the subject of the investigation. It is anticipated that the large number of investigations and the short time available in which to conduct them will necessitate preliminary determinations frequently to be made by internal Commission consecutive voting procedures rather than at scheduled public meetings.

Section 207.18 *Notice of preliminary determination.*

This Rule provides that the Commission shall notify all parties to its preliminary investigation of its determination and publish a notice of its determination in the Federal Register. In cases where the Commission's preliminary determination is affirmative, the Director of Operations may continue

such investigative activities as he deems appropriate pending notice of a affirmative preliminary determination or a final determination from the administering authority.

Subpart C—Final Determinations

Subpart C contains the procedures specifically applicable to final determinations.

Section 207.20 *Notice of investigation.*

Although it is not required by the statute, by this Rule the Commission intends to give to the public notice of its commencement of an investigation to reach a final determination under Section 705(b) or 735(b) of the Act.

Section 207.21 *Staff report.*

This Rule requires the Commission to place on the record a staff report containing recommended findings of fact of the Director of Operations. It is intended that portions of the staff report containing confidential or privileged information be placed on the nonpublic record and the remainder of the staff report, including a nonconfidential summary of the confidential or privilege portions, be placed on the public record. Rule 207.4 provides for the maintenance of the record in two portions, the public portion containing nonconfidential material and the nonpublic portion containing privileged and confidential material. This Rule then requires the Director to place his staff report on the record at specified times. In 75-day investigations he must do this on or before the 40th day after the date of the corresponding notice of investigation. In 120-day investigations the staff report will be placed on the record by the Director on or before the 75th day after the date of the corresponding notice of investigation. In 180-day investigations he shall place the staff report on the record on or before the 120th day.

The purpose of this procedure is to provide to the parties a preliminary indication of the Commission staff's view of the affected industry. Parties will be able to prepare their prehearing statements in such a way as to address one common body of information describing the allegedly injured United States industry. The intention of this is to make for a more cogent and pointed briefing of the issues.

Section 207.22 *Prehearing statement.*

This Rule requires each party to submit to the Commission a prehearing statement within 15 days after the date of service by the Commission to the parties of the public portion of the staff report discussed in the preceding Rule. The preparation of prehearing statements following receipt of the staff report will allow the parties to address the disputed issues directly and will enable the Commission to conduct a concise and penetrating hearing. It should be noted that the prehearing statements called for by this Rule should not be confused with the submission of copies of witnesses' prepared testimony required by Rule 201.12(d).

Section 207.23 *Hearing.*

Section 774 of the Act requires the Commission to hold a hearing at least once prior to making a final determination under section 705(b) or 735(b) of the Act, if any party to the investigation so requests. Rule 207.23 sets forth the procedures for conducting such a hearing. The Rule requires a person desiring to appear at a hearing to notify the Secretary of the Commission no later than 5 days prior to the date of the hearing. Each party appearing at the hearing must limit its arguments to a nonconfidential summary of the information and arguments contained in its prehearing statement and to a nonconfidential rebuttal of the information and arguments contained in the prehearing statements of other parties. Each other person, i.e., not a party, shall limit its presentation at the hearing to a brief statement of its position with respect to the subject matter of the investigation.

The purpose of this Rule is to focus and direct the hearing to the issues briefed in the prehearing statements. By limiting the arguments presented at the hearing to issues raised in the prehearing statements, the Rule also forces parties to raise all of their arguments in their prehearing statements. In this way, other parties will be advised of all adversary positions. Persons appearing at the hearing who are not parties, namely, consumer or other groups with no direct economic interest in the outcome of the proceeding, are limited to the presentation at the hearing of a brief position statement.

It is anticipated that parties will make copies of witnesses' formal testimony available before the beginning of the hearing in accordance with Rule 201.12(d), and that hearing presentations will be brief, to the point, and will, to the greatest extent possible, summarize the arguments set forth in the prehearing statement and in the witnesses' prepared written testimony.

A verbatim transcript will be made of the hearing and will be subject to nonsubstantive revision in accordance with subsection (c)(2) of this Rule. The transcript will be placed on the public record.

Section 207.24 *Posthearing statement.*

This Rule supersedes Rule 201.12(g). The Commission may order interested parties to submit within a specified time posthearing statements responsive to questions or requests of Commissioners made at the hearing. Without such a Commission order, the Commission will not accept a posthearing statement. The short time between the hearing and the promulgation of the Commission's opinion in these investigations will make it impossible for the Commission to give careful analysis to posthearing statements, which would appear on the record. Since the Commission intends to take the entire record into consideration when making its determination, late submissions will have the effect of filling the record with extraneous arguments not subject to Commission consideration and review; hence, they have been forbidden.

Section 207.25 *Final Determination by the Commission.*

This Rule restates sections 705(A)(1) and 735(A)(1) of the Act, which require the Commission to make a final determination of injury. Subsection (b) of this Rule restates the provisions of the Act which allow the Commission 120 days from the time the administering authority makes its affirmative preliminary determinations to make a final determination under section 705 or 735 of the Act. However, if the administering authority takes more than 75 days to make its final determination, then the Commission is guaranteed by the Act and by this Rule at least 45 days after the final determination of the administering authority to make its final determination. Thus, if the administering authority takes more than 75 days to make its final determination, the total elapsed time from the administering authority's preliminary determination to the Commission's final determination will be more 120 days.

Subsection (c) of this Rule, again tracking the Act, provides that, if the administering authority makes an affirmative final determination following a negative preliminary determination, then the Commission will have 75 days after the date of that affirmative final determination to make its final determination.

Subsection (d) of this rule sets forth the additional findings required by the Act in special situations. If the finding of the administering authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the Commission must make a finding that there is material injury which will be difficult to repair and that the material

injury is by reason of massive imports of the subsidized merchandise over a relatively short period of time. The corresponding provision in the antidumping area found in section 735(a)(3) of the Act requires the Commission to make a determination as to whether the material injury in critical circumstances is by reason of massive imports to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty provided for in section 731 of the Act retroactively on those imports.

The final subsection of this Rule is based on sections 705(b)(4)(B) and 735(b)(4)(B) of the Act, which require the Commission, when it makes a final determination that there is no material injury, but that there is a threat of material injury, to determine whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a) and 735(a) of the Act would have been found but for any suspension of liquidation of entries of the merchandise.

Section 207.26 *Factors considered in determination of material injury.*

This rule incorporates the factors set forth in section 771(7) of the Act to be considered by the Commission in making its determinations of injury under the Act. The factors listed in this Rule are not exclusive. Commission determinations of injury are governed ultimately by the standards in the following Rule and by the judgment and discretion of the Commission.

Section 207.27 *Standard for determination.*

This Rule reiterates that the presence or absence of any factor which the Commission is required to consider under the preceeding Rule shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

Section 207.28 *Publication of notice of determination.*

This Rule incorporates the standards of section 705(d) and 735(d) of the Act, which require the Commission to notify the petitioner, other parties to the investigation, and the administering authority of the Commission's determination and of the facts and conclusions of law upon which the determination is based. Notice of such determination shall be published by the Commission in the Federal Register.

Subpart D—Transition

This subpart sets forth rules implementing for the Commission sections 102, 103 and 104 of the Trade Agreements Act of 1979 with respect to investigations under section 303 of the Tariff Act of 1930 and the Antidumping Act, 1921 that are pending as of the effective date of Title VII of the Tariff Act of 1930, which the Commission now expects to be January 1, 1980. These rules also prescribe the priorities the Commission will use in scheduling investigation and consideration of certain classes of cases arising under this subpart.

Section 207.30 *Pending investigations and preexisting countervailing duty orders.*

This Rule implements sections 102 and 103 of the Trade Agreements Act by setting forth the principles for instituting, and the procedures applicable to, investigations under Title VII of the Tariff Act as amended by the Trade Agreements Act which were the subject of pending investigations under law existing before the effective date. Under section 103 of the Trade Agreements Act, investigation pursuant to section 303 of the Tariff Act of 1930 are subject to the procedural rules of Title VII of the new law except to the extent that those rules would not be applicable to such proceedings. These rules may not be applicable because the product concerned is not a product of a country under the agreement, is not a duty free article, or is a duty-free article from a country as to which the international obligations of the United States do not require an injury determination. As to section 303 cases that are subject to Title VII, and cases which concern products that were the subject of pending investigations under the Antidumping Act, 1921, section 102 generally provides that the investigation of the same matter would continue after the effective date of the new law so as to begin the proceeding under the new law as if the determination under the new law that is most closely analogous to the latest determination actually made under the old law had been made on the effective date. Finally, Rule 207.30 implements section 104 of the Trade Agreements Act, concerning countervailing duty orders in effect pursuant to the provisions of existing law which require some further action by the Commission. As to these various classes of cases, the following rules apply:

Under subsection (a)(1), if the Secretary has not made a preliminary determination, including either a preliminary determination under section 303(a)(4) of the Tariff Act of 1930 or section 201(b)(1) of the Antidumping Act, 1921, then the Commission will institute an investigation to determine whether there is a reasonable indication of injury in accordance with Title VII of the Tariff Act of 1930 as enacted by the new law. Since the new law clearly intends that the Commission have the full 45 days that would normally be allocated to it for such a preliminary determination, this Rule interprets section 102(a)(1) and section 102(b)(1) as providing the Commission with the full 45 days normally available for a reasonable indication determination under the new law, even though with respect to petition-initiated investigations, section 102 provides that these investigations are to begin "as if" an affirmative decision on institution had been made on the effective date. This interpretation is based upon the fact that under the new law, no time periods are calculated from the institution decision under Title VII, and therefore the statute can only be read to allow a full 45-day period.

Under subsection (a)(2), if the administering authority has made a preliminary but not a final determination as of the effective date, then the Commission proceeds with respect to the same subject matter under rules applicable to Commission investigations following a preliminary determination of the administering authority under the new law. These rules, which are contained in Subpart C of these rules, provide that if the administering authority's preliminary determination is affirmative, then the Commission institutes an investigation leading to a final determination subject to certain counting rules provided for in the law; and if the administering authority's preliminary determination is negative, then the Commission does not institute a formal investigation unless and until the administering authority makes a final affirmative determination. Consistent with Rule 207.18 concerning negative preliminary determinations by the administering authority, Rule 207.30(a)(2) provides that the Director will continue his investigative activities as appropriate pending the administering authority's final determination.

Under subsection (b) of this Rule, if the Commission is conducting an injury investigation under existing law as of the effective date of the new law, then on the effective date, it shall institute a 75-day injury investigation subject to certain rules for the treatment of preexisting determinations of the

Secretary of Treasury provided for in section 102 of the Act.

Subsection (c) of this Rule implements section 104(a)(2) of the Trade Agreements Act, which requires the Commission to make 180-day injury investigations with respect to certain countervailing duty orders of which the administering authority is required to notify the Commission by January 7, 1980. When this notice, together with the most current information the administering authority has with respect to the net subsidy benefiting the merchandise subject to the countervailing duty order is received by the Commission, this Rule would provide that these investigations begin. The investigations which are subject to this provision of the Trade Agreements Act concern countervailing duty orders issued under section 303(d) of the Tariff Act of 1930 by the Secretary of the Treasury with respect to products of a country under the Agreement that were either waived or that, waived or not, were issued after July 26, 1979 and before the effective date, or fell in certain other categories set forth in the regulation.

Under subsection (d) of this Rule, other countervailing duty orders are made subject to the petition process provided for in section 104(b) of the Trade Agreements Act. These requests may be made in a simple manner, but provision is also made for the Director to require requesters to make their request by filing a form he prescribes that would require information he considers necessary to conduct the investigation.

Section 207.31 *Scheduling the institution of investigation of certain unwaived investigations.*

This Rule sets forth the principles upon which the Commission may delay institution of investigations arising under section 104(b) of the Trade Agreements Act, relating to unwaived, preexisting countervailing duty orders issued before the date of enactment of Trade Agreements Act, which are provided for in Rule 207.30(d). The Commission at present expects, based upon the official record of outstanding countervailing duty orders set forth at 19 CFR 159.47(f) and upon other information available to it at the time of this notice, to have before it at least 20 investigations upon which action is required earlier than action would be required in cases arising under section 104(b). The Commission has therefore tentatively determined to assign to these other cases a higher priority than it would assign to cases arising under section 104(b). This higher priority will result in a conservation of administrative resources and, ultimately, public funds. The delay in investigation of cases arising under section 104(b) is justified by the Congressional determination to permit these cases to be decided in a much longer period of time than any other class of case arising under the new law. The classes of cases which, because of the shorter time limits that are applicable to them, have higher priority than cases arising under section 104(b) are (1) new petitions filed under Title VII of the Tariff Act of 1930 (requiring preliminary Commission determinations in 45 days); (2) pending investigations requiring Commission preliminary or final determinations (45-day to 120-day determinations); and (3) cases requiring—rather than requiring only on request—Commission investigations of certain countervailing duty orders under section 104(a) of the Trade Agreements Act (180 days).

The priorities the Commission has established would allow commencement of section 104(b) investigations at any time after they are filed, so long as within 10 days after the filing of a request for such an investigation, the Commission Secretary would inform the administering authority of the filing of the request. This notice has the effect of requiring the administering authority to suspend liquidation of entries as to the affected merchandise. This effect does not, however, depend on commencement of an active Commission investigation. Subsequently, the rule would permit the Commission to commence a section 104(b) investigation at any time so long as it completes the investigation within 3 years after the request is filed in accordance with the law. If a number of such petitions is filed, as is presently expected, then priorities among various investigations may be set pursuant to the Rule. One of the bases of these priorities would be consolidating cases relating to like products, which would be done pursuant to the Commission's authority under section 603 of the Trade Act of 1974 to consolidate its investigations.

Section 207.32 *Procedures for pending investigations.*

The purpose of this subsection is to make clear that the procedural rules applicable to investigations conducted under Subparts B and C would apply to investigations arising under Subpart D. Thus, the time limitations applicable under those subparts to the filing of staff reports, and the definitions and rules concerning hearings, the record, ex parte contacts, and so on, would all apply with full force with respect to Commission investigations in pending investigations and investigations of outstanding countervailing duty orders.

Subpart E—Investigations to Review Negotiated Agreements, and Investigations to Review Outstanding Determinations

This Subpart describes procedures that implement portions of Title VII of the Tariff Act of 1930 as amended by the Trade Agreements Act which provide for special determinations in antidumping and countervailing duty investigations by the Commission. These determinations are principally found in sections 704, 734 and 751 of Title VII. Subpart E concerns the termination of Commission investigations, completion and reinstitution of suspended investigations, and investigations to review both the suspension agreements of the administering authority and the determinations of the Commission when circumstances appear to have changed from those prevailing at the time of the determination.

Section 207.40 *Termination and suspension of investigation.*

Rule 207.40 concerns the termination and suspension of Commission investigations. Subsection (a) implements section 704(a) and 734(a) of the Act which permit the Commission to terminate an investigation after the administering authority has made a preliminary determination only upon the withdrawal of the petition by the petitioner and after notice to all parties to the investigation. The Act does not require the Commission to terminate an investigation where it has a reason for not terminating notwithstanding the withdrawal of the petition.

Subsection (b) provides that, upon receipt of a notice that the administering authority has suspended an investigation under section 704(b) or 734(b) of the Act, the Secretary shall issue a notice suspending the Commission's investigation. This provision is set forth in sections 704(f)(1)(B) and 734(f)(1)(B) of the Act. The notice shall not prevent the Director from conducting such investigative activities as he deems necessary, since investigative activity is authorized by section 603 of the Trade Act of 1974.

Subsection (c) provides for the resumption of suspended investigations upon notification from the administering authority that the agreements between the negotiating authority and foreign governments or foreign exporters which led to the suspension of an investigation no longer meet the requirements of the

Act. Procedures and the time limits for the Commission's investigation and final determination are established.

Section 207.41 *Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.*

This Rule concerns the Commission's review of agreements negotiated by the administering authority to eliminate the injurious effect of subsidized imports or imports sold at less than fair value. The rule implements the provisions of sections 704(h) and 734(h) of the Act, which provide standing requirements for petitions for such review and a 75-day time limit for the Commission's final determination.

Section 207.42 *Investigation continued upon request.*

This Rule concerns the provision in sections 704(g) and 734(g) of the Act for the Commission, upon the request, to continue an investigation after the publication of the notice of suspension of the investigation by the administering authority.

Section 207.43 *Commission determination in investigations to review agreements and in continued investigations.*

This Rule provides that, in investigations to review agreements and in continued investigations, described in Rule 207.41 and Rule 207.42, the Commission shall consider all of the merchandise subject to the investigation, not merely the merchandise covered by the agreements negotiated by the administering authority.

Section 207.44 *Consolidation of investigations.*

This Rule provides that the Commission shall consolidate investigations under section 704(g) of the Act with investigations under section 704(h) of the Act whenever such consolidation is appropriate. This Rule is authorized by section 335 of the Act and by section 603 of the Trade Act of 1974.

Section 207.45 *Investigation to review outstanding determinations.*

This Rule implements section 751 of the Act which provides for the Commission to review a determination concerning an agreement to suspend an investigation or a determination concerning injury to a domestic industry upon the receipt of information showing changed circumstances. In the absence of good cause, an investigation to review a determination or suspension agreement will not be instituted until at least 24 months after the date of publication of the notice of the determination or suspension. Subsection (b) provides that the procedures set forth in Subpart C of these Rules shall apply to review investigations and that such investigations shall be completed within 120 days. This provision implements section 751 of the Act.

Section 207.46 *Modification, clarification, or correction of a determination.*

Rule 207.46 provides that the Commission will issue any modification, clarification, or correction of a determination as may be necessary. This authority has been previously exercised (*see* Clarification of Determination in Investigation of Steel Wire Rope from Japan, 38 FR 27,560 (October 4, 1973)).

Subpart F—Judicial Review

Subpart F deals with judicial review of Commission determinations under section 303 and Title VII of the Act.

Section 207.50 *Judicial review.*

This Rule establishes procedures to facilitate judicial review of Commission determination in the U.S. Customs Court under section 516A of the Act. The Rule provides that a copy of the record (as defined in Rule 207.4) in the Commission proceeding will be transmitted to the Court by the Commission's Secretary at such time and in such form as the Court may by rule or order require. The Commission's General Counsel is appointed the Commission's agent for service of process in cases arising under section 516A.

Section 207.51 *Judicial review of denial of applications for disclosure of certain confidential information under protective order.*

This Rule establishes procedures to facilitate judicial review in the U.S. Customs Court under section 777(c) of the Act of Commission determinations not to disclose under protective order confidential information concerning domestic price or cost of production.

Subsection (a) of the Rule deals with transmittal of the record and reflects section 2633(c) of Senate bill S. 1654, the proposed Customs Courts Act of 1979. Subsection (a) provides that, when a court order is sought under section 777(c), the Secretary shall within 10 days transmit to the Court under seal the confidential information involved along with "pertinent parts of the record." Pertinent parts of the record is defined in subsection (c) to consist of (1) the application for Commission disclosure, together with any documents filed in support thereof or in opposition thereto, (2) any governmental memoranda relating to the Commission's denial, and (3) the Commission's denial of the application. Subsection (d) provides that the Commission's General Counsel is appointed the Commission's agent for service of process in cases arising under section 777(c).

Conforming Amendments

The Trade Agreements Act of 1979 requires several changes in existing Commission rules for conducting subsidy and antidumping investigations. These necessary conforming amendments are primarily technical in nature, and are confined to Part 201 of Title 19 of the Code of Federal Regulations (19 CFR 201.00 et seq.). The amendments are as follows.

Section 201.1 *Applicability of part.*

There presently exists a grammatical error in the second sentence of this section. By substituting "through" for "and" in the phrase "Parts 202 and 207, inclusive," it is intended to make clear that rules of special application may appear in all of Parts 202, 204, 205, and 207 which in case of conflict will take precedence over the rules of general application set forth in Part 201.

Section 201.2 *Definitions.*

The conforming amendments propose three additional definitions for terms used extensively in Part 207, but which are found in other parts as well. The new definitions—"Trade Agreements Act," "Rule," and "Secretary"—are self-explanatory.

Section 201.7 *Investigative authority and initiation of investigations.*

Present Rule 201.7 provides the means by which investigations may be initiated by the Commission. The methods outlined in the rule remain applicable under the new law, and are retained in a new subsection (b). Subsection (a) is added to make clear the Commission's prerogative to take those steps necessary for the expeditious and economical conduct of its proceedings. For example, separate investigations conducted under Part 207 relating to like products may be combined if the circumstances warrant. Similarly, adjudicative investigations conducted under Part 210 involving complaints and countercomplaints of unfair trade practices may be consolidated into a single proceeding.

Sections 201.9 *Methods employed in obtaining information;* 201.11 *Public hearings;* and 201.12 *Conduct of nanadjudicative hearings.*

In several sentences in these rules the word "evidence" is used in describing the information gathered in the course of Commission nonadjudicative proceedings. To make clear that the information upon which the Commission rests its determination in these proceedings is not evidence in the sense that it has been tested in an adjudicative forum, the word "information" is substituted for "evidence" where it now appears—in Rule 201.9, lines 11 and 12; Rule 201.11(c), line 5; Rule 201.12(e), line 2; and Rule 201.12(g), line 1. The lines are counted from the line in which the first word of text appears in the official version of the rules, found in volume 19 of the Code of Federal Regulations.

Section 201.12 *Conduct of nonadjudicative hearings.*

Besides the changes of the word "evidence" to "information" described above, the following amendments are proposed for section 201.12:

(d) *Submission of prepared statements.*

Section 201.12(d) is amended to require that witnesses' prepared statements shall be submitted not less than three business days prior to a hearing. Distribution of such statements for the first time at the hearing will no longer be allowed. The strict time requirement is necessary in view of the expedited conduct of investigations set forth in new Part 207.

(f) *Hearing transcripts.*

"(f)" is a typographical error denoting this subsection. The amendment will correctly number the subsection as 201.12(h).

(i) *Requests.*

New subsection (i) will allow parties to request the Commission (or its delegate) to take specific action thought to be necessary by the requester to facilitate the proceeding in which he is involved. It is contemplated that such requests will involve the timing or conduct of specific proceedings and similar matters. By requiring service of such requests on all parties, the rule provides an opportunity for comment or objection; however, it is not intended that a motions practice will evolve in Commission nonadjudicative investigations. The Commission will make an appropriate response to a request, but that may include taking no action.

Section 201.13(a). *Who may enter an appearance.*

Subsection 201.13(a) is amended to delete the requirement that an appearance be entered "for the purpose of appearing at a public hearing." Because parties may enter an appearance without participating in any hearing, the requirement is unnecessarily restrictive.

Proposed Rules

Part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207) is hereby repealed. A new Part 207 is established as follows:

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OF FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

Sec.

Authority: Sections 303, 332, 335, and 701–778 of the Tariff Act of 1930 (19 U.S.C. 1303, 1332, 1335, 1671 et seq.); sec. 603 of the Trade Act of 1974 (19 U.S.C. 2582); sections 102 through 107 and 1001 and 1002 of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note and 19 U.S.C. 1516A).

§ 207.1 Applicability of part.

Part 207 applies to proceedings of the Commission under section 303, Section 516A and Title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 2501 et seq.) and sections 102 through 107 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144). Subpart A sets forth rules of general applicability. Subpart B sets forth rules dealing with preliminary investigations under section 303 and Title VII of the Act. Subpart C sets forth rules dealing with investigations requiring final determinations under section 303 and Title VII of the Act. Subpart D is concerned with transitional cases, i.e., pending cases and countervailing duty orders under existing law. Subpart E addresses termination of an investigation, suspension and continuation of an investigation, and investigations to review negotiated agreements and determination in effect. Subpart F deals with judicial review of determinations made by the Commission under section 303 and Title VII of the Tariff Act of 1930.

Subpart A—General Provisions

§ 207.2 Definitions applicable in Part 207.

For the purposes of this Part, the following terms have the meanings hereby assigned to them:

(a) The term *the Act* means:

The Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

(b) The term *administering authority* means:

The Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or Title VII of the Act is transferred by law.[1]

(c) The term *country under the Agreement*[2] means:

A country—

(1) Between the United States and which the Agreement of Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) Which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) With respect to which the President determines that—

(i) There is an agreement in effect between the United States and that country which—

(A) Was in force on June 19, 1979, and

(B) Requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(ii) The General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(iii) The agreement described in paragraph (c)(3)(i) of this section does not expressly permit—

(A) Actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(B) Nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(d) The term *Director* means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Chairman.

(e) The term *effective date* means: January 1, 1980, or such other date as is required by section 107 of the Trade Agreements Act as the effective date of Title I of that act.

(f) The term *ex parte meeting*[3] means: Any communication between

(1) Any party providing factual information in connection with an investigation, and

(2) Any Commissioner or Commissioners, or members of Commissioner's staffs, or the Director of Operations,

in which less than all parties participate, and which is not a hearing for which an opportunity to participate is given to the parties.

(g) The term *injury*[1] means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of a class or kind of merchandise imported into the United States found to be subsidized or sold, or likely to be sold, at less than the fair value by the administering authority.

(h) The term *interested party*[2] means:

(1) A foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under Title VII of the Act, or a trade or business association a majority of the members of which are importers of such merchandise;

(2) The government of a country in which such merchandise is produced or manufactured;

(3) A manufacturer, producer, or wholesaler in the United States of a like product;

(4) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

(5) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(i) The term *party* means: Any interested party who has entered an appearance with the Commission under Rule 201.13 or any other person who, after showing to the satisfaction of the Commission a proper interest in the subject matter of an investigation, has filed such an appearance.

(j) The term *record* means: (1) all information presented to or obtained by the Commission during the course of a proceeding, including completed questionnaires, information obtained from the administering authority pursuant to sections 702(d)(2), 732(d)(2), 703(d)(3), 733(d)(3), 705(c), and 735(c) of the Act, written communications from any party, recommended findings of fact by the Director of Operations, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and

(2) a copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with Rule 201.8, serve a copy of each such document on all other parties to the investigation in the manner prescribed in Rule 201.16. The Commission shall serve on all parties to the investigation a copy of each document, except transcripts of conferences and hearings, placed in the record of the investigation by the Commission.

§ 207.4 The record.

(a) *Maintenance of the record.* The Secretary shall maintain the record of each proceeding conducted by the Commission pursuant to section 303 or Title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all documents, including exhibits thereto, and all other materials incorporated in the record. All material filed with the Secretary shall be placed in the public record with the exception of material which is privileged, or which is business confidential information submitted in accordance with Rule 201.6. Privileged and business confidential material shall be maintained in the nonpublic record.

(b) *Audits by the Director.* The Director may in his discretion audit completed questionnaires or otherwise verify information received in the course of a proceeding. To the extent an audit or verification results in new or different information, the Director shall place such information on the record.

(c) *Materials provided by the administering authority.* Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or nonpublic in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

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[1] *See* sections 303 and 771(1) of the Act.

[2] *See* section 701(b) of the Act.

[3] Derived from sec. 777(a)(3) of the Act.

[1] Derived from secs. 701(a) and 731 of the Act.

[2] Derived from sec. 771(9) of the Act.

§ 207.5 Ex parte meetings.

There shall be included in the record of each proceeding a record of ex parte meetings. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 Reports of progress of investigation.

The Secretary shall upon the request of a party inform the parties to an investigation of the progress of that investigation. No such progress report, however, shall be issued by the Secretary less than thirty (30) days after the date of publication of commencement of an investigation by notice in the Federal Register, nor will the Secretary be required to issue a report on the progress of any investigation less than thirty (30) days after the date of issuance of the previous such report with respect to the same investigation. A report shall be limited to a statement of what official actions the Commission has taken since the previous such report, if any.

§ 207.7 Limited disclosure of certain confidential information under a protective order.

(a) *In general.* Upon request of an attorney or other representative of a party to the investigation which describes with particularity the information requested and sets forth the reasons for the request, the Secretary will make available confidential information concerning the domestic price and cost of production of the like product submitted by the petitioner or an interested party in support of the petition to the representative under a protective order described in paragraph (b). The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this Rule. The Secretary's determination shall be final for purposes of review by the Customs Court under section 777(c)(2) of the Act.

(b) *Protective order.* The protective order under which information is made available to the representative of a party shall require that representative to submit to the Secretary in a form prescribed by the Secretary a personal sworn statement that he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding;

(ii) The person or agency from whom the information was obtained;

(iii) An attorney or other representative employed on behalf of the party requesting the disclosure, and who has furnished a similar statement; or

(iv) Those persons independently contracted by, or employed or supervised by, the attorney or other representative having a need thereof in connection with the proceeding and who have furnished a similar statement.

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraphs (b)(1) (iii) or (iv) concerning such confidential information without first notifying and conferring with the Secretary and the attorney or other representative of the party from whom such confidential information was obtained;

(4) Not copy or otherwise reproduce any confidential material obtained under protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

(c) *Final disposition of material released under protective order.* Upon completion of a proceeding, or at such earlier date as the Secretary may determine appropriate for particular data, the security of confidential information shall be protected by the return of all copies of materials released to representatives of parties pursuant to this section accompanied by a certificate from the attorney or representative to whom the material was disclosed attesting to his personal, good faith belief that no other copies of such material have been made available to the party he represents or any other person to whom disclosure was not specifically authorized.

(d) *Sanctions for breach of protective order.* The sworn statement referred to in paragraph (b) shall include an acknowledgment by the person providing it that breach thereof may, for up to seven years following publication of a determination that the order has been breached, subject to being barred from practice in any capacity before the Commission:

(1) The person submitting the statement, and

(2) Such person's partners, associates, employer, and employees.

Any breach of a protective order may be referred to the United States Attorney. In the case of an attorney, accountant, or other professional, such breach also shall be referred to the ethics panel of the appropriate professional association, and the offender and the party he represents shall be subject to such other administrative sanctions as the Commission determines to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender.

(e) *Sanction procedures.* The Commission shall determine whether any person has violated a protective order, and may impose sanctions in accordance with paragraph (d). Any person against whom a sanction is proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any proceeding under section 303 or Title VII of the Act, may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation the Commission may (1) use the best information otherwise available in making its determination; (2) seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333; (3) take such other actions as are necessary and appropriate, including waiver of any time limitation set forth in this part, as necessary to obtain needed information; or (4) any combination of the above.

§ 207.9 Affirmative determinations by divided Commission.

If the Commissioners voting on a determination by the Commission under section 303 or Title VII of the Act are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph, when the issue before the Commission is to determine whether there is, whether there would be, or whether there is a reasonable indication of:

(a) Material injury to an industry in the United States,

(b) Threat of material injury to such an industry, or

(c) Material retardation of the establishment of an industry in the United States, by reason of imports of the merchandise, an affirmative vote by any Commissioner on any of the issues

shall be treated as a vote that the determination should be affirmative.

Subpart B—Investigations of Reasonable Indication of Material Injury, Threat of Material Injury, or Material Retardation.

§ 207.10 Filing of petition with Commission.

Any interested party who files a petition with the administering authority pursuant to section 702(b) or 732(b) of the Act shall file a copy of the petition with the Commission on the same day as the petition is filed with the administering authority.

§ 207.11 Contents of petition.

The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or 731 of the Act and contain information reasonably available to the petitioner supporting the allegations. *See* Rule 207.26 for a list of factors relating to injury considered by the Commission. If the petition alleges critical circumstances, it shall also contain information reasonably available to the petitioner in support of the findings required to be made by the Commission pursuant to sections 705(b)(4)(A) and 735(b) (4)(A) of the Act.

§ 207.12 Cooperation with administering authority; informal inquiry.

Subsequent to receiving a copy of a petition pursuant to Rule 207.10, the Director shall conduct such informal inquiry as he deems appropriate. Information adduced by the inquiry shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition.

§ 207.13 Negative petition determination.

Upon receipt by the Commission of notice from the administering authority under section 702(d) or 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or 732(c)(3) of the Act, the Director shall cease any informal inquiry he may have begun pursuant to Rule 207.12 and shall so notify all persons who have received requests for information from him.

§ 207.14 Notice of investigation of reasonable indication of injury

Upon receipt by the Commission of notice from the administering authority under section 702(d) or 732(d) of the Act that the administering authority has commenced an investigation under section 702(a) or 702(c)(2), or 732(c)(2) of the Act, the Director shall institute an investigation whether there is reasonable indication of injury under section 703(a) or 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

§ 207.15 Written statements, conference, and further investigation.

Within four (4) days after the date of publication in the Federal Register of the Commission's notice instituting an investigation as provided in Rule 207.14, any person may submit to the Commission a written statement of information pertinent to the subject matter of the investigation. If he deems it appropriate, the Director shall hold a conference and conduct such other investigative activities as he deems necessary to obtain the best available information within the time limitations set forth in the regulations. The conference, if any, shall be held after notice thereof is served on the parties and published in the Federal Register and shall be transcribed. All other information adduced through such investigative activities will be placed on the record.

§ 207.16 Recommendation of Director.

The Director shall submit to the Commission his recommendation based on the record concerning the existence of a reasonable indication of injury under section 703(a) or 733(a) of the Act within ten (10) days of the date of the publication in the Federal Register of an investigation, but not more than thirty-five (35) days after the date the petition was filed under Rule 207.10.

§ 207.17 Determination by Commission of reasonable indication of injury.

Except in the case of a petition dimissed by the administering authority under section 702(c)(3) or 732(c)(3) of the Act, the Commission within 45 days after the date on which a petition is filed under section 702(b) or 732(b) of the Act or on which it receives notice containing the available information on which institution was based from the administering authority of an investigation commenced under section 702(a) or 732(a) of the Act, as the case may be, shall make a determination based upon the best information available to it at the time of the determination of whether there is reasonable indication of injury by reason of imports of the merchandise which is the subject of the investigation by the administering authority.

§ 207.18 Notice of preliminary determination.

The Commission shall notify the petitioner, other parties to the investigation, and the administering authority of its preliminary determination under section 703(a) or 733(a) of the Act and of the facts and conclusions of law upon which the determination is based, and it shall publish a notice of its determination in the Federal Register. If the Commission's preliminary determination is negative, the investigation shall be terminated. If the Commission's preliminary determination is affirmative, the Director may continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or 733(b) of the Act. If the administering authority's preliminary determination is affirmative, the Commission shall institute an investigation in accordance with Subpart C. If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 705(a) or 735(a) of the Act.

Subpart C—Final Determinations

§ 207.20 Notice of investigation.

Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or 733(b) of the Act or, if the administering authority's preliminary determination is negative, of an affirmative final determination under section 705(a) or 735(a) of the Act, the Commission shall publish in the Federal Register a notice of its investigation to reach a final determination under section 705(b) or 735(b) of the Act.

§ 207.21 Staff report.

(a) The Director will prepare and place in the record a staff report containing his recommended findings of fact concerning all the issues in the final investigation. Portions of the staff report containing confidential or privileged information will be placed in the nonpublic record, and the remainder of the staff report, including a nonconfidential summary of the confidential or privileged portions, will be placed in the public record.

(b) (1) *75-day investigations.*—In injury investigations that are to be completed in 75 days, namely,

(i) injury investigations following a negative preliminary determination by the administering authority (Rule 207.25(c)),

(ii) investigations to review agreements to eliminate injurious effect (Rule 207.41), or

(iii) other investigations provided for in these rules incorporating by reference timing rules of this subpart (continuing investigations provided for in Rule 207.42 and investigations in transition under Subpart D),

the staff report shall be placed on the record by the Director not later than the 40th day after the date of the corresponding notice of investigation.

(2) *120-day investigations.*—In injury investigations that are to be completed within 120 days, namely, injury investigations following an affirmative preliminary determination by the administering authority under Rule 207.25(b) and other investigations provided for in these rules that incorporate by reference timing rules of this subpart (continued investigations provided for in Rule 207.42 and investigations in transition provided for in Subpart D of this Part), the staff report shall be placed on the record by the Director not later than the 75th day after the date of the corresponding notice of investigation.

(3) *180-day investigations.*—In injury investigations concerning waived and certain other countervailing duty orders under Rule 207.30(c) of these Rules, that are to be completed within 180 days, the staff report shall be placed on the record by the Director not later than the 120th day after the date of the corresponding notice of investigation.

§ 207.22 Prehearing statement.

Within fifteen (15) days after the date of service by the Commission to the parties of the public portion of the staff report, each party shall submit to the Commission a prehearing statement. A prehearing statement shall include:

(a) Exceptions, if any, to the recommended findings of fact contained in the staff report;

(b) Any additional or proposed alternative findings of fact;

(c) Proposed conclusions of law;

(d) Any other information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or 735(b) of the Act; and

(e) A proposed determination for adoption by the Commission.

§ 207.23 Hearing.

(a) *In general.* The Commission shall hold a hearing in the course of an investigation upon the request of any party to the investigation, or at its own instance, before making a final determination under section 705(b) or 735(b) of the Act.

(b) *Procedures.* Any such hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of subchapter II of the chapter 5 of title 5, United States Code, or to section 702 of that title. Any person desiring to appear at a hearing shall notify the Secretary not later than five (5) days prior to the date of the hearing. Each party shall limit its presentation at the hearing to a nonconfidential summary of the information and arguments contained in its prehearing statement and to a nonconfidential analysis of the information and arguments contained in the prehearing statements required by Rule 207.22. Each other person appearing shall limit its presentation at the hearing to a brief statement of its position with respect to the subject matter of the investigation. Hearings shall be subject to Rule 201.12, with the exception of subsection (g) thereof.

(c) *Hearing Transcripts.* (1) *In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions will be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he will incorporate the revision into a revised transcript.

§ 207.24 Posthearing statement.

The Commission may permit persons to submit within a specified time posthearing statements responsive to questions or requests of Commissioners made at the hearing. Posthearing statements not submitted in accordance with Commission direction will not be accepted for filing.

§ 207.25 Final determination by the Commission.

(a) *In General.* At the times specified below, the Commission shall make a final determination of whether—

(1) An industry in the United States—

(i) Is materially injured, or

(ii) Is threatened with material injury, or

(2) The establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a)(1) or 735(a)(1) of the Act.

(b) *Period for injury determination following affirmative preliminary determination by administering authority.* If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is affirmative, then the Commission shall make the determination required by paragraph (a) of this Rule before the later of—

(1) The 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b) or 733(b) of the Act, or

(2) The 45th day after the day on which the administering authority makes its affirmative final determination under section 705(a)(1) or 735(a)(1) of the Act.

(c) *Period for injury determination following negative preliminary determination by administering authority.* If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is negative, and its final determination under section 705(a)(1) or 735(a)(1) of the Act is affirmative, then the final determination by the Commission under this section shall be made within 75 days after the date of the administering authority's affirmative final determination.

(d) *Certain additional findings.* (1) If the finding of the administering authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) There is material injury which will be difficult to repair, and

(ii) The material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(2) If the finding of the administering authority under section 735(a)(3) of the Act concerning critical circumstances is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in section 735(a)(3) of the Act to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 of the Act retroactively on those imports.

(3) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under sections 705(a) or 735(a) of the Act would have been found but for any

suspension of liquidation of entries of the merchandise.

§ 207.26 Factors considered in determination of material injury.

(a) In making its determinations under sections 703(a), 705(b), 733(a), and 735(b) of the Act, the Commission shall consider, among other factors—

(1) The volume of imports of the merchandise which is the subject of the investigation,

(2) The effect of imports of that merchandise on prices in the United States for like products, and

(3) The impact of imports of such merchandise on domestic producers of like products.

(b) For purposes of paragraph (a) of this section—

(1) In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(2) In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(i) There has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(ii) The effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(3) In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(ii) Factors affecting domestic prices, and

(iii) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(c) Special rules for agricultural products.

(1) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(2) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(d) For purposes of this Rule—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

§ 207.27 Standard for determination.

The presence or absence of any factor which the Commission is required to consider under Rule 207.26 shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

§ 207.28 Publication of notice of determination.

Whenever the Commission makes a final determination under Section 303 or Title VII of the Act, it shall notify the petitioner, other parties to the investigation, and the administering authority of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

Subpart D—Transition

§ 207.30 Pending investigations and existing countervailing duty orders.

(a) *Investigations in progress at the administering authority as of the effective date.* If, as of the effective date, there is an investigation in progress (i) under section 303 of the Act as to whether a bounty or grant is being paid or bestowed on either duty-free imports subject to a Commission injury investigation or imports from a country under the agreement; or, (ii) under the Antidumping Act, 1921, as to whether imports from a country are being or are likely to be sold in the United States or elsewhere at less than fair value, then the following rules apply:

If the administering authority as of the effective date—

(1) Has not made a preliminary countervailing duty or a tentative antidumping determination, as the case may be, then the Commission shall issue a Notice of Investigation and commence an investigation with respect to the same matter in accordance with Rule 207.14 to determine whether there is a reasonable indication of injury, as provided for in sections 703(a) or 733(a) of the Act, which shall be completed within 45 days after the effective date;

(2) Has made a preliminary countervailing duty or a tentative antidumping determination, but not a final determination, then the Commission shall proceed in accordance with Subpart C of these Rules to investigate the same matter, except that in the event of a negative preliminary or negative tentative determination by the administering authority, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the adminstering authority.

(b) *Investigations in progress at the Commission as of the effective date.* If, as of the effective date, the Commission is conducting an investigation under section 303 of the Act or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation concerning the same matter under Title VII of the Act, which shall be completed within 75 days after the effective date, and it shall—

(1) Treat any final determination of the administering authority under section 303 as a final determination under section 705(a) of the Act and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of Title VII of the Act; and

(2) Treat any final determination of the administering authority under the Antidumping Act, 1921, as a final determination under section 735(a) of the Act.

(c) *Commission investigations of injury in cases in which countervailing duties were waived or a countervailing duty order was published after July 26, 1979.* Upon receipt by the Commission of the administering authority's most current net subsidy information pertaining to any countervailing duty order in effect on the effective date which the administering authority waived under section 303(d) of the Act or which was published after July 26, 1979, with respect to products of a country under the agreement, or the subject of which concerns frozen, boneless beef from the European Communities under Treasury Decision 76-109, the Commission shall commence an investigation to determine whether there is injury within the meaning of section 104(a)(2) of the Trade Agreements Act of 1979, which investigation shall be completed within 180 days after such receipt. The Secretary will transmit the

Commission's determination to the administering authority and publish it in the Federal Register.

(d) *Commission investigation of injury in cases in which countervailing duty orders were published before July 26, 1979, and were not waived.* Within three (3) years of the effective date, a request in writing may be filed on behalf of the government of a country under the Agreement or on behalf of exporters of such country accounting for a significant portion of the exports to the United States of the merchandise subject to a countervailing duty order in effect on the effective date or issued pursuant to a court order in an action brought under section 516(d) of the Tariff Act of 1930, and not subject to section (c) of this Rule, then the Commission shall commence an investigation to determine whether there would be injury by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. The request shall set forth the person, persons, or government making the request, the order as to which the request is made, the relief sought, the factual basis therefor, and otherwise be generally in compliance with Part 201 of these Rules. In addition, the Director may prescribe a form for making such requests, which shall be completed if available, and which may require information that the Director considers necessary to conduct the investigation. The Commission determination in such investigations shall be made within three (3) years of the date of the receipt of the request that caused the Commission to investigate. Within ten (10) days after the filing of a request under this subsection, the Secretary shall notify the administering authority of the order or orders that are the subjects of the request. The Secretary will also transmit to the administering authority the Commission's determination in investigations under this subsection, and publish notice thereof in the Federal Register.

§ 207.31 Scheduling the institution of investigation of certain unwaived investigations.

The Commission shall use the following standards for establishing priorities of institution among requests under Rule 207.30(d) when the work before the Commission is such as to make immediate investigation in such cases impractical:

(a) The Commission shall first initiate investigations in cases where countervailing duty orders have longest been in effect, and

(b) The Commission, when appropriate, shall consolidate investigations relating to like products.

§ 207.32 Procedures for pending investigations.

The procedures set forth in Subpart B of this Part, including applicable time limitations, shall apply to all investigations requiring a preliminary determination within 45 days. All other investigations described in this Subpart D shall comply with the procedures, including applicable time limitations, set forth in Subpart C of this Part.

Subpart E—Terminated, Suspended, and Continued Investigations, Investigations to Review Negotiated Agreements, and Investigations to Review Outstanding Determinations

§ 207.40 Termination and suspension of investigation

(a) An investigation under Title VII may be terminated by the Commission by giving notice in the Federal Register to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation, however, before a preliminary determination is made by the administering authority under section 703(b) or section 733(b) of the Act.

(b) Upon receipt of a notice of suspension of an investigation by the administering authority under section 704(b) or 734(b), the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the same matter.

(c) *Resumption of suspended investigation.* (1) *Purpose.* If the administering authority determines that an agreement described in subsection 704 (b) or (c) or subsections 734(b) or (c) of the Act is being, or has been violated, or no longer meets the requirements of section 704 or 734 of the Act (other than the requirement under subsection 704(c)(1) and 734(c)(1), of complete elimination of injury) and so notifies the Commission of its determination and, in the event that the investigation suspended by the agreement was not terminated, the Commission shall resume the investigation as if this determination of the administering authority were an affirmative preliminary determination under subsection 703(b) or 733(b) of the Act.

(2) *Period for injury determination.* The Commission shall make its final determination in conformity with the schedule established in Rule 207.25(b).

(3) *Procedures.* The procedures set forth in Subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this Rule 207.40.

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in subparagraph (3), (4), or (5) of Rule 207.2(h). Investigations under this Rule 207.41 shall be completed within 75 days of their initiation.

§ 207.42 Investigation continued upon request.

Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in Subparts B and C of this Part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43 Commission determination in investigations to review agreements and in continued investigations.

In making a final determination in investigations to review agreements described in Rule 207.41 or in continued investigations described in Rule 207.42, the Commission shall consider all of the merchandise which is the subject of the investigation without regard to the effect of the agreement.

§ 207.44 Consolidation of investigations.

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(h) or section 734(h) of the Act.

§ 207.45 Investigation to review outstanding determination.

(a) *Purpose.* Upon the receipt of information concerning, or upon a request for the review of, a determination concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the alleged changed circumstances, the agreement continues to eliminate completely the injurious effect of imports of the merchandise; or (2) whether changed circumstances exist which indicate that, if the countervailing duty order or antidumping order were modified or revoked, an industry in the United States would be threatened with material injury, or the establishment of such an industry would be materially retarded. In the absence of good cause shown, no investigation under this Rule 207.45 shall be instituted within twenty-four (24) months of the date of publication of the notice of the suspension or determination.

(b) *Procedures.* The procedures set forth in Subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this Rule 207.45.

§ 207.46 Modification, clarification, or correction of a determination.

Nothing in Rule 207.45 shall limit the inherent authority of the Commission to issue an appropriate modification, clarification or correction of a determination within a reasonable time of its issuance.

Subpart F—Judicial Review

§ 207.50 Judicial Review.

(a) *In general.* Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Customs Court.

(b) *Transmittal of record.* In the event a Commission determination is appealed to the U.S. Customs Court under section 516A, a copy of the record in the proceeding before the Commission, as such record is defined in Rule 207.2(j), will be transmitted to the Court by the Commission's Secretary at such time and in such form as the Court may require by rule or by order.

(c) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 516A of the Act.

§ 207.51 Judicial review of denial of application for disclosure of certain confidential information under protective order.

(a) *In general.* Persons entitled to judicial review under section 777(c) of a Commission determination not to disclose confidential information concerning domestic price or cost of production may apply to the U.S. Customs Court for an order directing the Commission to make the information involved available.

(b) *Transmittal of record.* In the event a court order is sought under section 777(c) requiring the Commission to disclose confidential information concerning domestic price or cost of production, the Secretary shall within ten (10) days transmit to the Court under seal the confidential information involved along with pertinent parts of the record.

(c) *Pertinent parts of the record.* The pertinent parts of the record shall consist of (1) the application for Commission disclosure together with any documents filed in support thereof or in opposition thereto, (2) any Government memoranda relating to the Commission's determination, and (3) the Commission's action on the application.

(d) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 777(c) of the Act.

Conforming Amendments

PART 201—RULES OF GENERAL APPLICATION

It is proposed that the following changes be made in Part 201 of Title 19 of the Code of Federal Regulations:

§ 201.1 [Amended]

1. Substitute the words "202 through 207" for the words "202 and 207" where they appear in Rule 201.1, line 6;

§ 201.2 [Amended]

2. Add new paragraphs (f), (g), and (h) to Rule 201.2 as follows—

(f) "Trade Agreements Act" means the Trade Agreements Act of 1979 (Pub. L. No. 96-39).

(g) "Rule" means a section of the Commission Rules of Practice and Procedure (19 CFR Chapter II).

(h) "Secretary" means the Secretary of the Commission.

3. Revise Rule 201.7 to read as follows:

§ 201.7 Investigative authority and initiation of investigations.

(a) *Investigative authority.* In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) *Initiation of investigations.* Investigations may be initiated by the Commission on the Commission's own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive order, or in this chapter.

§§ 201.9, 201.11, and 201.12 [Amended]

4. Substitute the word "information" for the word "evidence" where it appears in Rule 201.9, lines 11 and 12, Rule 201.11(c), line 5, Rule 201.12(e), line 2, and Rule 201.12(g), line 1;

5. Substitute in Rule 201.12(d) the words "not less than three (3) business days prior to the hearing" for the words "three business days prior to the hearing or as close to actual presentation at the hearing as possible."

6. Substitute "(h) *Hearing transcripts.*" for "(f) *Hearing transcripts.*" in Rule 201.12.

7. Add a new paragraph (i) to Rule 201.12 as follows—

§ 201.12 Conduct of nonadjudicative hearings.

* * * * *

(i) *Requests.* Any party to a nonjudicatory investigation may request the Commission to take particular action with respect to any aspect of an investigation. Such requests shall be by letter addressed to the Secretary, shall be placed by him in the record, and served on all other parties. The Commission shall take such action or make such response as it deems appropriate.

§ 201.13 [Amended]

8. Delete from Rule 201.13(a), lines 6 and 7, the language "for the purpose of appearing at a public hearing."

By order of the Commission.
Issued: October 5, 1979.

Kenneth R. Mason,
Secretary.

[FR Doc. 79-31649 Filed 10-12-79; 8:45 am]
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Monday
October 15, 1979

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program for New Construction; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 880

[Docket Number R-79-663]

Section 8 Housing Assistance Payments Program for New Construction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: The regulation governing the Section 8 new construction program has been revised to accomplish three major objectives. First, the language of the regulation has been simplified and the format altered to make the regulation easier to read and use. Second, rent, cost and amenities limitations, and requirements for cost justification of rents in certain cases have been added in order to control and reduce the costs of the program. Third, processing changes have been made to assure coordination of Section 8 and HUD mortgage insurance programs with fewer developer submissions and to reduce and level out field office workload in order to improve the efficiency and quality of processing.

This regulation does not apply to projects developed under other Section 8 regulations, including Parts 881, 882, 883, and 885, except as provided in those parts.

EFFECTIVE DATE: November 5, 1979.

FOR FURTHER INFORMATION CONTACT: George O. Hipps, Office of Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-5720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On June 12, 1979, a proposed revision to the Section 8 new construction program regulation (24 CFR Part 880) in its entirety was published in the Federal Register at 44 FR 33804 for public comment. Interested parties were given until August 13, 1979 to submit comments on this amended regulation.

The Section 8 new construction program is a rental assistance program. Under this program, the government provides the difference between the approved rent for an appropriate housing unit and the amount paid by an eligible lower-income family, including the elderly and handicapped. Proposals from private owners or public housing agencies are generally submitted in response to a public advertisement. They are competitively evaluated and the best one(s) selected for further processing, construction and eventual occupancy. The program does not provide construction or mortgage financing. An owner may use any method of financing available to him, including HUD mortgage insurance.

More than 230 individuals and organizations submitted written comments. Due to the importance of this revision and the volume of comments, all comments received prior to August 27 were considered. Numerous changes are being made in the proposed regulation in response these comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

1. Limitation on Contract Rents

A large majority of comments objected to the 10 percent maximum by which contract rents may exceed those determined through market comparison if justified by cost. Most stated that greater flexibility is necessary in making adjustments to rents to ensure feasible projects especially in areas where few unassisted comparable projects exist. Further, many stated that the requirements for cost justification and cost certification now contained in this regulation provide a more stringent standard in determining the reasonableness of rents than market comparison rents in many cases. A significant number of commenters favored a straight cost approach in determining rents.

After careful consideration, the Department has determined that retention of the use of rent comparability is most consistent with the desire to control program costs. The use of market comparison of rents, even with a cost-justified adjustment factor, tends to moderate costs and rents because what a market tenant will actually pay tends to encourage moderately designed projects as compared to use of rents determined by actual cost plus a return on the owner's investment. Further, the continued use of rent comparability is essential to the Department's goal of reducing and leveling out of field office workload to improve the efficiency and quality of processing. However, it was determined that the regulation should retain a maximum adjustment of up to 20 percent (as currently provided in the program Handbook) rather than the 10 percent contained in the proposed regulation in cases where cost and expense data show this is necessary for a feasible project.

2. Limitation on Replacement Costs

Several comments stated that actual dollar limitations should not be included in the regulation, as this would require an additional rulemaking when these limits are raised. In keeping with the Department's stated intention in the supplementary information accompanying the proposed rule, § 880.204(c)(4) has been added to provide that subsequent changes to the limitations will be published by Notice in the Federal Register.

3. Limitation on Amenities

In response to several comments, § 880.204(c) has been revised to clarify that the use of more durable materials to reduce long-term costs will not be considered an excess amenity and to provide that each field office will prepare a list(s) of acceptable amenities for use in its jurisdiction.

Several comments objected to field office review of all final architectural drawings and specifications for compliance with the amenities limitation. Some suggested use of a design architect's certification with regard to excessive amenities. However, the Department has retained the provision for field office review for compliance with amenity standards to assure that projects are of "modest design."

4. Limitation on Distributions

A majority of comments objected to a limitation on distributions. Several comments pointed out that the proposed difference between the limits for syndicated and non-syndicated owners was slight and would, therefore encourage syndication and discourage long-term ownership and management. Still others indicated that syndicated and non-syndicated projects provide the same tax benefits.

In response to the many comments received relative to the proposed limitation on distributions, this section has been revised as follows:

(a) The differentiation between syndicated and non-syndicated owners has been deleted.

(b) Distribution for elderly projects is limited to 6 percent on equity and for non-elderly projects to 10 percent on equity. The higher rate of return for family projects is intended to provide additional incentive to develop these projects. The Assistant Secretary for Housing may provide for an increase in later years' distributions.

(c) The definition of "equity" has been revised to recognize an equity

contribution higher than 10 percent of replacement cost when justified by cost certification in accordance with HUD mortgage insurance procedures.

(d) Shortfalls in return in one year may be paid from excess funds accummulated in future years.

5. Pipeline Processing

Comments on establishment of a pipeline were almost equally divided for and against. Many supported the concept in the interest of processing efficiency. There was concern expressed regarding the approval of marginal proposals when significantly better proposals might be obtained in response to a Notification of Fund Availability. The Department feels that establishment of a pipeline is essential in the interest of leveling out field office workload. However, in response to the concerns raised, § 880.302 has been revised to provide that only "high quality" proposals will be retained in the pipeline and to provide that a proposal may be carried in the pipeline for only one fiscal year following the fiscal year in which it was submitted.

6. Small Projects for Non-elderly Families

In response to several comments stating that development of new construction projects under 50 units is infeasible in many areas, the definition of a "small project" has been changed to one containing a total of 50 units (assisted or unassisted) or fewer.

7. Site and Neighborhood Standards Unchanged

As stated in the supplementary information to the proposed rule, this regulation does not alter the current site and neighborhood standards. Revisions to these standards have been published for comment and comments are currently under study. When new standards are published, they will replace the standards contained in this regulation. It is noted that 24 CFR Part 200, Subpart N, Project Selection Criteria, does not apply to projects approved under Part 880.

8. Contract Provisions

Many objections to these provisions were received, primarily due to concerns over the effects of possible future retroactive rule changes when obligated to a single fixed term contract. Others stated that a single fixed term should not be required if the contract is not pledged as security or if the mortgage is prepaid. On the other hand, several commenters stated that the change is overdue to assure the long term use of Section 8 projects for lower-income families. Consistent with the Department's policy that units built under the Section 8 program, which often involve favorable financing at public expense, remain available as assisted housing for lower-income families for the total contract term, the provisions of §§ 880.502 and 880.504 relative to a single contract term and a 10 percent limitation on the leasing of assisted units to ineligible families without prior HUD approval have been retained without retroactive effect.

9. Increased Housing Opportunities for Non-elderly Families Residing in Impacted Jurisdictions & Residency Requirements and Preferences

Due to substantial opposition and many comments from individuals, local officials, developers, legislators and others, the provisions relative to early marketing to impacted areas and the prohibition of residency requirements and preferences have been substantially altered. This final rule contains the following provisions:

(a) Local residency requirements are prohibited.

(b) Local residency preferences may be applied only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(c) Applicants who are expected to reside in the community because of current or planned employment will be treated as residents.

With respect to marketing of Section 8 units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide real opportunities to reside in the project to persons from impacted jurisdictions, persons who are least likely to apply as determined in the affirmative marketing plan, and persons expected to reside in the community by reason of current or planned employment. When the Agreement is executed authorizing the start of construction, field offices are to notify PHA's, Community Development Agencies, metropolitan-wide clearinghouses or fair housing organizations where there is no metropolitan-wide clearinghouse as to the number and size of units in the project and when initial marketing and occupancy is expected, so that the owner may contact these agencies for referrals when advanced marketing commences.

HUD will monitor compliance with the requirements for advanced marketing and for affirmative fair housing marketing. This will include reviews of activities undertaken and data on tenant characteristics.

10. Project Reserves

In light of the many comments received stating that an operating deficit escrow is an individual underwriting matter and, as such, more appropriately left to the discretion of the lender, the provision for an operating deficit escrow has been deleted. In the interest of continuing and proper long-term maintenance of assisted units, however, the provision for a replacment reserve has been retained in § 880.602. The level of contributions to this reserve has been revised to bring it more into line with HUD mortgage insurance provisions.

11. Termination of Tenancy and Modification of Leases

Section 880.607 has been rewritten for increased clarity and to make the language and format consistent with the recently published regulation for the Section 8 moderate rehabilitation program. The comments received relative to this section were generally favorable. The Department has determined that assisted families may not be evicted except for good cause as defined in § 880.607. Moreover, the addition of provisions of this section relative to termination of tenancy makes the requirements of the Section 8 new construction program similar to those of other HUD-subsidized insured, HUD-owned and direct loan projects pursuant to 24 CFR Part 450.

12. Relocation and Land Acquisition Requirements

Several comments were received stating that the relocation requirements contained in the proposed rule did not offer adequate protection to displaced tenants. The commenters recognized that greater protection was perhaps more important to the development of Section 8 substantial rehabilitation projects pursuant to 24 CFR Part 881, which are often occupied at the time of application to HUD for assistance. They felt, nevertheless, that the new construction regulation should be strengthened to assure that any displacement occurring as a result of the program was subject to adequate relocation requirements.

Therefore, a new § 880.209, Relocation and Land Acquisition Requirements, has been established. The major features added are as follows:

(a) The Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 continues to apply to displacement resulting from the acquisition of real

property by a public housing agency or other State agency.

(b) For other tenants permanently or temporarily relocated as a direct result of the project, the owner must provide adequate notice and assistance in relocating to a suitable unit, reasonable moving and related expenses (or, in some circumstances, a fixed payment for moving), temporary relocation expenses, and other related relocation provisions.

(c) If affordable replacement housing cannot otherwise be identified and government assistance cannot be secured, the owner may satisfy the requirements of § 880.209 by providing the tenant with a lump sum payment equal to 48 times the amount, if any, necessary to reduce the monthly housing cost of a suitable replacement dwelling to 25 percent of the combined monthly gross income of all adult members of the tenant's household.

(d) Lower-income single persons, who are not elderly or handicapped but who are displaced as a result of the project, may return to occupy assisted units in accordance with 24 CFR Part 812.

13. Other Changes

(a) The requirement for annual submission of an audited financial and operating statement has been retained in the interest of improved management and for monitoring of distributions of project funds.

(b) The current policy of biennial review of the income of elderly families has been restored in response to numerous comments.

14. Applicability of the Regulation

In the proposed regulation, the Department specifically invited comments regarding the extent to which Subparts E and F should be made applicable to all projects, consistent with the rights of owners under existing Contracts. A few comments were submitted on this issue opposing such a provision. The Department has determined not to make the whole of Subparts E and F applicable to all projects in this final rule. As proposed, Subparts E and F will apply to all projects for which an Agreement has not been executed before the effective date of this revision and may apply to projects for which an Agreement has been executed if the owner and HUD agree to do so. Section 880.607, Termination of Tenancy and Modification of Leases, will apply to existing families under lease when the lease is renewed on or after the 60th day following the effective date of this revision. It will also apply to new families who commence occupancy or execute a lease on or after 30 days after the effective date of this revision. This is being done to implement the Department's determination that families assisted under the Section 8 program, as recipients of Federal assistance, may not be evicted except for good cause.

Since this final rule is to apply to the Fiscal Year 1980 Section 8 new construction program, it is necessary that the rule become effective as soon as possible so that applications submitted early in the fiscal year can be reviewed and approved in conformance with this regulation. For that reason, the Department has determined that there is good cause for not requiring a 30-day delay in the effective date after publication of this final rule (as provided in 5 U.S.C. 553(d)). Accordingly, this rule becomes effective on the date set forth above.

Inapplicability of NEPA

HUD has made a Finding of Inapplicability regarding requirements under the National Environmental Policy Act of 1969 in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the Office off the Rules Docket Clerk, Office of General Counsel, room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, Part 880 is amended in its entirety as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

Subpart A—Summary and Applicability

Sec.

Subpart B—Definitions, Project Eligibility and Other Requirements

Subpart C—Proposal Submission to Start of Construction

Subpart D—Construction Period and Cost Certification

Subpart E—Housing Assistance Payments Contract

Subpart F—Management

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 5(b), U.S. Housing Act of 1937; 42 U.S.C. 1437c(b); sec. 7(o), of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), sec. 324 of the Housing and Community Development Amendments of 1978.

Subpart A—Summary and Applicability

§ 880.101 General.

(a) *Purpose.* (1) The purpose of the Section 8 program is to provide lower-

income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(2) In addition to this regulation, Section 8 new construction assistance may also be made available through state housing finance and development agencies (24 CFR Part 883), in connection with financing by the Farmers' Home Administration (24 CFR Part 883) or in connection with direct HUD loans for housing for the elderly or handicapped (24 CFR Part 885). Section 8 may also provide assistance in substantially rehabilitated housing (24 CFR Part 881) or in existing housing in acceptable condition or needing only moderate rehabilitation (24 CFR Part 882).

(3) This part does not apply to projects developed under other Section 8 program regulations, including Parts 881, 882, 883, and 885, except to the extent specifically stated in those parts.

(b) *Housing Assistance.* Under the Section 8 new construction program, monthly payments are made directly by the contract administrator (HUD or a public housing agency) to the project owner to assist an eligible family leasing an assisted unit or for vacancies in certain cases. These payments, known as "housing assistance payments," are made pursuant to a Housing Assistance Payments Contract, which is executed upon satisfactory completion and HUD acceptance of a project and which has a maximum term of from 20 to 40 years depending on how the project is financed. This Contract is discussed in Subpart E.

(c) *Tenant Rents and Eligible Families.* In addition to the housing assistance payment, the project owner receives a tenant rent directly from the eligible family occupying an assisted unit. The total amount received by the owner for rent is called the contract rent and is set forth in the Contract. "Eligible families," including elderly and handicapped individuals, must have incomes within the HUD specified limits (based on 80% of median income for the area), and pay between 15% and 25% of their income for rent (including utilities), adjusted in accordance with HUD regulations in 24 CFR, Part 889.

(d) *Rent, Cost and Amenities Limitations.* In the Section 8 new construction program, rents, replacement costs and amenities must comply with limitations contained in Subpart B. These limitations serve to establish the modest nature of housing assisted under the program and to assure that the rents in Section 8 housing are reasonable in relation to comparable unassisted housing in the area. After occupancy, rents will be adjusted to reflect changes in the costs of owning and operating rental housing.

(e) *Financing.* The Section 8 program provides only rental assistance. It does not provide construction or permanent financing. Section 8 may be used with any type of construction or permanent financing, such as FHA mortgage insurance programs, tax-exempt financing (see 24 CFR Parts 811 and 883) and loans from conventional lending institutions. The owner can pledge the commitment to make housing assistance payments contained in the contract to support financing.

(f) *Eligible Owners.* All types of private developers and sponsors, including profit-motivated and non-profit, and public housing agency developers and sponsors are eligible to develop and own housing assisted under this program. In all cases, the owner is responsible for the determination of eligibility and selection of tenants and for all management and maintenance functions. The provisions governing project management are contained in Subpart F.

(g) *Allocation of Contract Authority.* HUD commits funding for new projects under the Section 8 program and increases the funding commitment for previously approved projects pursuant to contract authority provided by Congress. The contract authority for new projects is allocated to HUD field offices on the basis of a "fair share" formula reflecting population, poverty, overcrowding, housing condition and similar indices of housing need. Each field office, in turn, suballocates its contract authority among the various allocation areas within its jurisdiction on essentially the same "fair share" basis. Not every area receives an allocation of contract authority for new construction. A further description of this process is contained in 24 CFR Part 891, Subpart D.

§ 880.102 Processing.

Proposals for housing to be assisted under this part are submitted to HUD field offices and processed differently depending on several criteria.

(a) Previously submitted "pipeline" proposals which are of high quality and were found approvable but not funded in the prior fiscal year are reviewed first when any new contract authority becomes available. If additional authority remains, HUD may consider preapproved sites, and, in certain areas, permit selection of developers by local governments. Where there are set-asides for projects to be owned by local public housing agencies or to be located in HUD-approved New Communities or for other purposes, proposals may be received, processed and approved without the need to await specified acceptance periods or to undergo formal competition. Sections 880.302 and 880.303 of Subpart C set forth these procedures.

(b) HUD receives other proposals under this part from owners (developers) in response to public invitations, called notifications of fund availability (NOFAs), which request the submission of preliminary proposals containing a maximum number and type of units in a particular area. Interested owners obtain copies of the detailed developer's packet from the HUD field office which published the NOFA.

(c) HUD reviews all proposals received in response to a NOFA for deficiencies in documentation and content in order to determine eligibility for further processing. If there are more acceptable proposals that can be approved under available Section 8 contract authority, HUD evaluates the proposals, ranks them and selects the highest ranking proposals. Those not selected which are of high quality are placed in the pipeline for possible later funding. Proposals for projects for non-elderly families are accepted as long as contract authority remains available and are reviewed on a monthly cycle. Proposals for projects for elderly families must be submitted by the specified deadline date and are reviewed at the end of the submission period. Details of this process are contained in Subpart C, §§ 880.304 through 880.307.

(d) After HUD selects a preliminary proposal, the owner of the selected proposal submits a final proposal for the project. This proposal contains a more detailed description of the project, including cost and expense estimates where required, and more detailed plans for design, construction, financing and management. After HUD review and approval of the final proposal, the working drawings are completed by the owner's architect and reviewed by HUD for compliance with project amenities limitations. When HUD finds these drawings to be acceptable, an Agreement is executed by the owner and the contract administrator (either HUD or a public housing agency) and construction begins. Details of this process are contained in Subpart C, §§ 880.308 through 880.311. The

Agreement provides that a Contract will be executed upon proper construction, completion and acceptance by HUD of the project.

§ 880.103 Construction and Management.

(a) *Construction.* Construction of the project is carried out in conformance with the Agreement. Increases in contract rents or utility allowances are permitted with HUD approval during construction only if they are necessary to cover cost increases as specified in § 880.403. The project will be accepted by HUD and a Contract executed upon completion in accordance with the Agreement. These provisions are contained in Subpart D, §§ 880.401 through 880.404.

(b) *Cost Certification.* As soon as possible after completion of a project, the owner, except in the case of exempted projects, will provide HUD with cost certifications. HUD will review the contract rents based on the owner's certified cost and reduce them where not justified by actual cost. Section 880.405 details this process.

(c) *Contract.* The owner and the contract administrator will execute the Contract on satisfactory completion of the project. The Contract provides that the owner will receive housing assistance payments for units being leased by eligible families and, under certain circumstances, payments for vacant units. The owner may not reduce the number of units in a project available for lower-income families by more than 10 percent without the prior approval of HUD. The term of the Contract varies depending on the type of financing used by the owner. Administration of the Contract is done either by HUD or by a public housing agency under an Annual Contributions Contract with HUD to assure that the owner meets his/her obligations under the Contract. Subpart E contains provisions concerning the Contract.

(d) *Management.* The owner is responsible for all management functions, including marketing, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy and collection of rents. The owner must also provide for a replacement reserve. Contract rents will be adjusted annually in accordance with 24 CFR Part 888. Subpart F contains management provisions.

§ 880.104 Applicability of revised regulation.

(a) The revised Part 880 applies to all proposals for which a notification of selection was not issued before the effective date of this revision. Where a notification of selection was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that he/she wishes the revision to apply and promptly brings the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the effective date of this revision. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the effective date of this revision. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

§ 880.105 Applicability to proposals and projects under 24 CFR Part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR Part 811, the provisions of Part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and Part 811, Part 811 will control.

Subpart B—Definitions, Project Eligibility and Other Requirements

§ 880.201 Definitions.

ACC. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the PHA (as contract administrator) and HUD. Under the ACC, HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees, and the PHA agrees to perform the duties of a contract administrator.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Allocation Area. A municipality, county, one or more Indian areas, or group of contiguous municipalities or counties identified by HUD or in an approved Areawide Housing Opportunity Plan for the purpose of allocating housing assistance to support economically feasible housing projects.

Assisted Unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract Rent. The total amount of rent specified in the Contract as payable by HUD and the tenant to the owner for an assisted unit.

Decent, Safe and Sanitary. Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

Elderly Family. An elderly family as defined in 24 CFR Part 812, including an elderly, disabled or handicapped individual.

Fair Market Rent. HUD's determinations of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain in a particular market area privately developed and owned, newly constructed rental housing of modest design with suitable amenities.

Family. (Eligible Family) A family which qualifies as a lower-income family, as defined in this section. For purposes of this definition, "family" will have the meaning of "family" contained in 24 CFR Part 812 (including single elderly, handicapped, disabled and displaced persons and the remaining member of a tenant family).

Final Proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)

Household Type. The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

Housing Assistance Payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible family, the payment is the difference between the total housing expense and the total family contribution. A housing assistance payment, known as a "vacancy payment," is made to the owner when an assisted unit is vacant. A payment is made to the family if the utility allowance is greater than the total family contribution.

Housing Assistance Plan. A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, Part 570.

Housing Type. The three housing types are new construction, rehabilitation, and existing housing.

HUD. The Department of Housing and Urban Development.

Impacted Jurisdiction. A jurisdiction in a Standard Metropolitan Statistical Area (SMSA) where the ratio of lower-income families to total families is materially higher than the ratio of lower-income families to total families for the entire SMSA.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Lower-Income Family. A family whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family. HUD may establish income limits higher or lower if necessary in certain cases. For purposes of this definition, "income" shall have the meaning of "income for eligibility" contained in 24 CFR, Part 889.

New Communities. New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

NOFA. (Notification of Fund Availability) The notice published by HUD announcing the availability of contract authority for housing assistance and inviting the submission of proposals.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease newly constructed dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-Assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA. (Public Housing Agency) Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for lower-income families.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Preliminary Proposal. The application describing a proposed project under this part which an owner submits in response to a NOFA in order to be selected for housing assistance.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with § 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement Cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary for Housing.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Tenant Rent. The portion of the contract rent payable directly to the owner by an eligible family occupying an assisted unit. Tenant rent equals the total family contribution less any utility allowance.

Total Family Contribution. The portion of an eligible family's income payable toward the family's total housing expense, as determined in accordance with 24 CFR, Part 889.

Total Housing Expense. The total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family.

Utility Allowance. An estimate, made or approved by HUD, of the cost of utilities (except telephone) and other essential housing services for an assisted unit which are not included in the contract rent paid directly to the owner but which are the responsibility of the eligible family leasing the unit.

Vacancy Payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very Low-Income Family. An eligible family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family.

§ 880.202 Project eligibility.

(a) For purposes of this part, "new construction" refers to (1) housing for which construction starts after execution of the Agreement, or (2) housing which is already under

construction when the Agreement is executed provided that:

(i) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(ii) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(iii) At the time construction was initiated, all parties reasonably expected that the project would be completed and occupied without assistance under this part.

(b) The Section 8 new construction program is for rental housing only; no assistance will be provided for any unit occupied by an owner. Cooperatives are considered rental housing rather than owner-occupied housing for purposes of this part.

(c) The types of new construction rental housing which can be assisted under this part include: (1) Single-family houses, mobile homes, where appropriate, and multifamily structures; (2) housing designed for the elderly, disabled or handicapped, and (3) single-room occupant housing planned specifically as a relocation resource for eligible single persons.

(d) High-rise elevator projects for families with children are prohibited unless HUD determines that there is no practical alternative.

(e) High-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

(f) Projects for non-elderly families are required, where practicable, to have at least 5 percent of the housing units designed and accessible to the physically handicapped.

(g) Housing assisted under other provisions of the U.S. Housing Act of 1937, such as public housing assisted with annual contributions under Sections 5 and 9 of the Act, is not eligible for assistance under this part. Tax exemption under Section 11(b) of the Act is not considered assistance for this purpose.

(h) Conversions of new construction projects under the Section 23 Leased Housing Program to the Section 8 program will be permitted, where appropriate, provided that the Section 23 project qualifies as new construction under paragraph (a) of this section and that all parties, including HUD, agree.

(i) No proposal for housing under this part may be approved unless the requirements of 24 CFR Part 891, implementing Sections 213 (a), (b) and (c) of the Housing and Community Development Act of 1974, as amended, concerning review and comment by units of general local government, have been satisfied. (See § 880.306(c)(1).)

§ 880.203 Fair market rents.

(a) Fair Market Rents are HUD's determinations of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain in a particular market area privately developed and owned, newly constructed rental housing of modest design with suitable amenities.

(b) Separate Fair Market Rents are established by unit size (number of bedrooms), basic structure type (detached, semi-detached/row, walk-up and elevator apartments) and occupant group (non-elderly family and elderly family, including handicapped) for individual market areas.

(c) The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedrooms for the elderly, multiplied by 1.05, rounded to the nearest whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) single room occupancy dwelling units are those for 0-bedroom units of the same type.

(d) Fair Market Rents for mobile homes may be established for an area upon application to HUD. The application must show that there is a need and demand for mobile homes in the area for which they are proposed, and that mobile homes are acceptable under local requirements in that area.

(e) Fair Market Rents are published in the Federal Register at least annually in accordance with 24 CFR, Part 888. Interim revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

§ 880.204. Limitations on contract rents, replacement costs and amenities.

(a) *Purpose and Applicability of Limitations.* The purpose of the Section 8 program is to assist lower-income families in renting decent, safe and sanitary housing of modest design with suitable amenities. This section sets limitations on the contract rents, replacement costs and amenities of projects constructed under this part. These limitations are intended to permit production of suitable housing without excessive costs, design features or amenities.

(b) *Limitation on Contract Rents.* The contract rents for a project from proposal submission through cost certification, must be within both of the following limitations:

(1) *Fair Market Rent.* The contract rent plus any utility allowance for the unit must not exceed the Fair Market Rent in effect at the time of processing. The published Fair Market Rents will reflect a trended rent in order to allow for the period of construction as stated in the publication. If the scheduled construction time for a project is less, an appropriate reduction will be made in determining the approvable contract rent. The contract rent plus utility allowance may exceed the applicable Fair Market Rent under special circumstances or if needed to implement a local Housing Assistance Plan or Areawide Housing Opportunity Plan:

(i) By up to 10 percent with the approval of the HUD field office manager, or

(ii) By up to 20 percent with the approval of the HUD Assistant Secretary for Housing; and

(2) *Rent Reasonableness.* The contract rent must be reasonable. Contract rents will be considered reasonable only under the following conditions:

(i) When HUD determines that the rents compare reasonably to or are below the rents of unassisted units of similar age, design and location which provide comparable amenities and services; or

(ii) Rents may exceed those determined by market comparison by no more than 20 percent only in cases where warranted by cost and expense estimates provided by the owner at final proposal and cost certification at completion, as specified in §§ 880.308 and 880.405; or

(iii) For small projects and partially-assisted projects, the rents may exceed the comparable rents by up to 10 percent without the cost justification set forth in paragraph (b)(2)(ii) of this section.

(c) *Limitation on Replacement Costs.* (1) No proposal for a project to be assisted under this Part will be selected or approved by HUD, and no Agreement may be executed for a project, with an estimated replacement cost greater than the following limits plus any additional cost not attributable to dwelling use to the extend approved by HUD. The limits applicable to the part of the project attributable to dwelling use, as determined by HUD, are as follows:

(i) The basic limits are: (A) $23,720 per dwelling unit without a bedroom; (B) $27,129 per dwelling unit with one bedroom; (C) $32,983 per dwelling unit with two bedrooms; (D) $42,217 per dwelling unit with three bedrooms; and (E) $47,032 per dwelling unit with four or more bedrooms.

(ii) Where necessary to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, HUD may increase the limits provided in paragraph (c)(1)(i) of this section, not to exceed: (A) $24,962 per dwelling unit without a bedroom; (B) $28,614 per dwelling unit with one bedroom; (C) $34,795 per dwelling unit with two bedrooms; (D) $45,011 per dwelling unit with three bedrooms; and (E) $49,409 per dwelling unit with four or more bedrooms.

(iii) For any market area where cost levels so require, the Assistant Secretary for Housing may increase, at the request of the field office, the dollar amount limits set forth in paragraphs (c)(1) (i) and (ii) of this section by up to 50 percent.

(iv) If the Assistant Secretary finds that, because of high costs, it is not feasible to construct dwellings in Alaska, Guam, or Hawaii without the sacrifice of sound standards of construction, design, and livability within the limits in paragraphs (c)(1) (i) and (ii), of this section, the principal amount of the replacement cost limits may be increased by amounts as are necessary to compensate for additional costs, but not to exceed the maximum, including high cost area increases under paragraph (c)(1)(iii) of this section, if any, otherwise applicable by more than 50 percent.

(2) Except for the exemption contained in paragraph (c)(3) of this section, the limitation on replacement costs applies to all projects in their entirety.

(3) Partially-assisted project are exempt from the replacement cost limitation of this paragraph.

(4) The mortgage amount of a HUD-insured proposal will be determined in accordance with the limitations and requirements of the applicable mortgage insurance program.

(5) Subsequent changes to the limitations on replacement costs under paragraphs (c)(1) of this section, will be made by Notice published in the Federal Register and will be available on request.

(d) *Excess Costs,* The limitation of paragraph (c) of this section will not prohibit the total actual cost of a project from exceeding the limit referred to in that paragraph. However, in determining or adjusting contract rents, HUD will not take into account or give credit for any cost which exceeds the applicable replacement cost limit.

(e) *Limitation on Amenities.* (1) Amenities in projects assisted under this Part will be limited to those amenities which are generally provided in unassisted housing of modest design in the market area, as determined by HUD. Generally, the amenities included in the determination of Fair Market Rents for the area may be included in a project. [The use of more durable, high quality materials to control or reduce maintenance and repair and replacement costs will not be considered an excess amenity.]

(2) The field office will prepare a list(s) of acceptable amenities for use within its jurisdiction. Other amenities will not be permitted unless the owner provides justification for each additional amenity to HUD, and its inclusion is approved by HUD.

(3) Except for the exemption contained in paragraph (e)(4) of this section, the limitation on amenities applies to all projects in their entirety.

(4) Partially-assisted projects are exempt from the limitation of this paragraph.

§ 880.205 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(6) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary for Housing may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the Federal Register.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary for Housing may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the Federal Register.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 880.405) unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (c) of this section.

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

§ 880.206 Site and neighborhood standards.

Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site must not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national

origin renders sites outside areas of minority concentration unavailable; or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, or vehicular traffic; rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The site must comply with any applicable conditions in the local Housing Assistance Plan approved by HUD.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) The project may not be built on a site that has occupants unless the relocation requirements referred to in § 880.209 are met.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

§ 880.207 Property standards.

Projects must comply with:

(a) HUD Minimum Property Standards;

(b) In the case of mobile homes, the Federal Mobile Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR Part 3280;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(d) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

§ 880.208 Financing.

(a) *Types of Financing.* Any type of construction financing and long-term financing may be used, including: (1) conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions; (2) mortgage insurance programs under the National Housing Act; (3) mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and (4) financing by tax-exempt bonds or other obligations.

(b) *HUD Approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) Issuers of tax-exempt obligations pursuant to Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR, Part 811.

(2) Issuers of tax-exempt obligations exempt from Federal taxation under any provisions of law or governmental regulation other than Part 811 (except for State Agencies qualified under Part 883) must submit all documents required by 24 CFR 811.107, 811.108, 811.109, and 811.110 to the field office for review and approval. The terms and use of these obligations and the operation of the project will comply with the requirements of Part 811. (See also 24 CFR 811.117.)

(3) Issuers of tax-exempt obligations which are State Agencies qualified under Part 883 and which are not subject to Part 811 will comply with the requirements of Part 883 with regard to approval of tax-exempt financing.

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this Part: *Provided, however,* That such financing is in connection with a project constructed pursuant to this Part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture or HUD regulations and remit any excess to the owner.

(d) *Foreclosure and Other Transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

§ 880.209 Relocation and land acquisition requirements.

(a) *Application of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition) apply to the acquisition of real property by a PHA or other State Agency (as defined at 24 CFR 42.85) for a project assisted under this Part and to any displacement that results from such acquisition.

(b) *Displacement not Subject to the Uniform Act.* With respect to any residential tenants (not owner-occupants) who will be permanently or temporarily relocated as a direct result of a project that is assisted under this part, but who are not assisted under the Uniform Act, the following policies will apply:

(1) Such tenants are eligible for the relocation assistance and benefits described below if they are relocated following the submission to HUD of the preliminary proposal for the project (or first proposal if the proposal is submitted in accordance with § 880.303(c), Special Categories) except where (i) their tenancy is terminated on the grounds set forth in § 880.607(b)(1), or (ii) they take occupancy after HUD's preliminary approval of the proposal with notice from the owner of the

pending proposal and potential displacement.

(2) Within a reasonable period of time prior to displacement, each tenant to be permanently relocated will be provided a reasonable choice of opportunities to move to a suitable replacement dwelling unit from among available units so located as to promote choice outside areas of low income and minority concentration.

(3) For purposes of this section, a suitable replacement dwelling is:

(i) Decent, safe and sanitary as defined in 24 CFR 42.47.

(ii) Available within the tenant's ability to pay (i.e., the monthly rent and average estimated cost of utilities does not exceed 25 percent of the combined monthly gross income of all adult members of the tenant's household);

(iii) In an area not subject to unreasonable adverse environmental conditions, either natural or man-made;

(iv) In a location that is not generally less desirable than the location of the displaced tenant's dwelling with respect to public utilities, commercial and public facilities, and the tenant's place of employment (or to sources of employment, if the tenant is unemployed but seeking work).

(4) Each tenant will be reimbursed by the owner for reasonable moving and related expenses at the levels described at 24 CFR 42.303 or may receive, at the discretion of the owner, a fixed payment for moving expenses in accordance with 24 CFR 42.353.

(5) A tenant may be required to relocate for a temporary period only if this is necessary to carry out the project and he/she is permitted to occupy a dwelling in the completed project. If required, the temporary relocation will not exceed 12 months in duration; a decent, safe, and sanitary dwelling in an area not subject to unreasonably adverse environmental conditions will be available to the tenant for the period of the temporary relocation; and the tenant will be reimbursed actual, reasonable out-of-pocket expenses, including moving costs to and from the temporarily occupied dwelling and any increase in monthly housing cost (rent and reasonable utility costs) incurred in connection with the temporary relocation. If the new dwelling unit is not ready for occupancy within the 12-month period, the tenant will be notified of the earliest date by which it will be ready, and the tenant in that case will have the right to agree to wait until the extended date or to request that he/she be treated as permanently displaced.

(6) All tenants occupying property on which new construction units will be developed will be provided with advance information in writing and by personal explanation that is sufficient to enable them to understand fully the reason for their displacement and the relocation opportunities and assistance which is available to them.

(7) All tenants will be provided appropriate advisory services necessary to minimize hardships in adjusting to required permanent or temporary relocation.

(8) No lawful occupant will be required to move from his/her dwelling or to move his/her business without at least 90 days advance written notice of the earliest date by which he/she may be required to move.

(i) If the tenant is provided but refuses a reasonable choice of opportunities to move to a suitable replacement dwelling, the owner will not be obligated to make further efforts to provide replacement housing.

(ii) If replacement housing within the tenant's ability to pay cannot be identified and government assistance that would satisfy this requirement cannot be secured, the owner's obligation under this section may be satisfied by providing the tenant with a lump sum payment equal to 48 times the amount, if any, necessary to reduce the monthly housing cost (rent and utilities) of a suitable replacement dwelling to 25 percent of the combined monthly gross income of all adult members of the tenant's household.

(iii) A tenant who believes he/she has not received the proper relocation payments or opportunities to relocate to a decent, safe and sanitary dwelling to which the tenant is entitled under this Section may appeal to the HUD field office.

(iv) Owners are responsible for assuring that payments and services required by this section are provided. Costs incurred by the owner in providing these services and payments may be included in project replacement cost (see §§ 880.403(a)(6) and 880.405(a)) except that payments to tenants permanently relocated in accordance with paragraph (b)(8)(ii) of this section may not be so included.

(c) *Eligibility of Lower-Income Single Persons.* Lower-income single persons, who are not elderly or handicapped but who are displaced as a result of the project, may return to occupy assisted units in accordance with 24 CFR Part 812.

§ 880.210 Other Federal Requirements

(a) *Equal Opportunity Requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and all related rules, regulations and requirements.

(b) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all related rules, regulations and requirements.

(c) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all related rules, regulations and requirements.

(d) *Davis-Bacon and Related Acts.* Participation in this program requires that payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), be paid to all laborers and mechanics employed in the development of any project within nine or more assisted units and compliance with all other related rules, regulations and requirements.

(e) *Rehabilitation Act.* Participation in this program requires compliance with the Rehabilitation Act of 1973 and Executive Order 11914 and all related rules, regulations and requirements.

(f) *Other Federal Statutes and Regulations.* Participation in this program requires compliance with the National Historic Preservation Act (Pub. L. 89-665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800.

Subpart C—Proposal Submission To Start of Construction

§ 880.301 Allocation of contract authority to field offices.

(a) Funding authorization for the Section 8 program is assigned to HUD field offices annually in the form of contract authority, which is the maximum amount authorized for annual commitments under Contracts. Assignments are made pursuant to 24 CFR, Part 891, Subpart D. Each field office suballocates this authority to the areas within its jurisdiction, also in accordance with Part 891, Subpart D.

(b) In the allocation process, the field office determines the amount of contract authority and the approximate number of units of Section 8 new construction specifically designed for elderly families, for non-elderly families and for large non-elderly families (5 or more

persons) which will be made available in each allocation area.

(c) For the contract authority made available in each allocation area, the HUD field office will process proposals as provided for in §§ 880.302, 880.303 and 880.304.

§ 880.302 Procedures for resumption of processing of proposals and preapproved site requests.

(a) *Review of Pipeline.* Prior to the publishing of a NOFA or the consideration of requests for preapproved sites, the pipeline of approvable proposals which are of high quality relative to the standards and requirements of this part submitted in the same or the prior fiscal year and preapproved site requests will be reviewed to determine whether to resume processing for any or all of them. In making the decision as to whether to resume processing, the following will be considered:

(1) Whether the proposal or preapproved site request is consistent with the final or tentative allocation plan for the area in which the project is proposed to be located;

(2) Whether the proposal or preapproved site request conforms to the housing type and household type requirements of any applicable Housing Assistance Plan;

(3) Whether the proposal or preapproved site request is consistent with priorities for targeting of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area.

(b) *Notice to Owners or Local Governments.* Owners of proposals or local governments with preapproved site requests which are eligible in accordance with paragraph (a) of this section to resume processing will be sent a letter requesting them to advise HUD within a specified time, generally 5 days, as to whether or not they wish processing to be resumed on their proposals or requests and, if their decision is in the affirmative, to submit to HUD the following within a specified time, generally 10 days (for a total of 15 days):

(1) For proposals, updated proposed rents;

(2) For proposals, the replacement cost estimate required by § 880.305;

(3) Up-to-date evidence of site control; and

(4) Any information on other factors which might affect the current approvability of their proposals or requests.

Owners or local governments may submit any other information they wish, but the field office is not required to consider this additional information.

(c) *Section 213 and A-95 Clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government and A-95 clearinghouse, where applicable, will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

(d) *Resumption of Processing.* Upon receipt of the updated information, the field office will resume processing of the proposal or request in accordance with § 880.306(c) or § 880.303(a).

(e) *Notice Where Processing Not Resumed.* Owners of proposals and local governments with preapproved site requests for which processing is not resumed because of failure to meet the requirements of paragraphs (a) and (b) of this section, or for which owners or local governments do not request resumption of processing will be notified in writing that their proposals or requests will not be processed further. One file copy of each such notice will be retained by the field office.

§ 880.303 Special procedures for certain categories of proposals.

(a) *Preapproved Sites.* (1) Units of general local government may submit written requests to the field office for preapproval of sites. To the extent feasible, such requests should be submitted early in the fiscal year. Requests for preapproval must indicate the anticipated number of units, structure type, household type, bedroom distribution and the price at which the site will be made available. Further, the local government must indicate if it wishes to select the proposal as allowed under paragraph (a)(5) of this section.

(2) If the field office determines that use of a site for which preapproval has been requested may be appropriate, it will review the request to determine compliance with site and neighborhood standards (§ 880.206) and environmental standards, and to determine the acceptability, as to both reasonableness and feasibility, of the proposed price at which the site will be made available. The request will also be reviewed for consistency with the allocation plan for the area, any applicable Housing Assistance Plan and targeting priorities described in § 880.302(a)(3).

(3) If the site meets all of these requirements, the field office will advise the unit of general local government:

(i) That the site is approvable for Section 8 use;

(ii) Of the approximate number of units, by structure type, household type and bedroom distribution that may be assisted;

(iii) Of the contract authority required;

(iv) Whether HUD has reserved such contract authority, will do so as soon as sufficient contract authority becomes available or will retain the request in the pipeline for consideration in accordance with § 880.302; and

(v) How processing will proceed, including how selection of the proposal will be accomplished.

(4) Reservations of contract authority for preapproved sites may be made only after the amount of authority necessary for pipeline proposals has been determined.

(5) For approvable sites in Federally-assisted urban renewal areas (including unsold land in closed-out urban renewal areas), selection of the proposal may be under applicable urban renewal procedures, subject to the field office approval. For sites acquired or to be acquired with Community Development Block Grant funds or located in non-Federally-assisted urban renewal areas, the local government may select the proposal in accordance with a competitive method approved by the field office and consistent with State law.

(6) For approvable sites outside those areas set forth in paragraph (a)(5) of this section, selection of the proposal will be accomplished by the field office by publishing a NOFA requesting proposals for that site pursuant to § 880.304.

(b) *Other Categories.* Where set-asides are made for projects to be owned by PHAs, for projects to be located in New Communities or for other purposes, proposals may be obtained by invitation or other appropriate means, as determined by the field office, or the New Communities Development Corporation where appropriate. Selection procedures may be modified, as approved by the Assistant Secretary for Housing, to meet the objectives of the set-asides. Prior to submission of proposals, prospective owners will be advised of the modified procedures.

(c) *Proposal Submissions for Special Categories of Projects.* Preliminary proposals are not required for projects submitted pursuant to paragraphs (a) or (b) of this section, except in the case of proposals under paragraph (a)(6) of this section. The first proposal submitted for such projects may be a final proposal in accordance with § 880.308.

(d) *Special Local Government Option.* Local governments may be authorized by the Assistant Secretary for Housing to select proposals on sites located in their jurisdictions. Procedures for local

government selection of proposals under this paragraph will be published by Notice in the Federal Register.

§ 880.304 Publication of NOFA and receipt of proposals.

(a) After determination of the amount of contract authority necessary for pipeline proposals as provided in § 880.302, and any commitments of contract authority for preapproved sites or other categories as provided in § 880.303, the field office will publicize the availability of the remaining contract authority, if any, in accordance with paragraph (b) of this section.

(b) A summary notification of fund availability (NOFA) for all allocation areas within the jurisdiction of the field office will be published at least once a week for two consecutive weeks in a newspaper(s) of general circulation in the allocation areas. The summary NOFA will identify the estimated contract authority and approximate number of units by housing and household type for each allocation area. Specific information for each allocation area will be contained in a detailed NOFA which will be provided upon request. The detailed NOFA will identify the geographic area of each allocation area for which contract authority is available and include the following information for each area:

(1) The contract authority available for new construction and the approximate number of units for elderly, non-elderly and large non-elderly families that the contract authority is expected to support;

(2) The first and last dates for acceptance of preliminary proposals for projects for elderly families and the first date for acceptance of proposals for projects for non-elderly families;

(3) The fact that proposals for projects for non-elderly families will be accepted at any time after the initial acceptance date so long as contract authority remains available, and that all such proposals received during one 30-day period will be processed and, if necessary, ranked against each other;

(4) The fact that the NOFA will be cancelled for an allocation area when all available contract authority has been or is expected to be used or when a decision by HUD pursuant to § 891.405 to reallocate any unused contract authority has been made;

(5) The fact that developer's packets for each allocation area and type of proposal will be available prior to the opening date for submission of proposals and that information and assistance are available from the field office.

(c) Copies of the detailed NOFA will be provided to minority and fair housing organizations, media and the chief executive officer of each jurisdiction with a Housing Assistance Plan in the allocation area.

(d) Field offices may issue Conditional NOFAs subject to the sufficiency of a future allocation of contract authority. Proposals received in response to a Conditional NOFA will be processed in accordance with the provisions of § 880.306, but notifications of selection will not be sent until contract authority becomes available and is reserved.

(e) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the A-95 clearinghouses or local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

§ 880.305 Contents of preliminary proposal.

Each preliminary proposal must contain:

(a) A description of the proposed housing, including sketches of the proposed building, unit plans, listing of amenities, esitmated date of completion and whether it will be completed in stages, and other information requested in the developer's packet.

(b) Identification and description of the proposed site, site plan and neighborhood, and evidence of site control as requested in the developer's packet;

(c) Evidence that the proposed construction is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(d) The proposed contract rent per unit, including an indication of which utilities, services and equipment are included in the rent and which are not. For those utilities and services which are not included, an estimate of the average monthly cost for each unit type for the first year of occupancy.

(e) The estimated replacement cost per unit and the estimated total replacement cost, including any cost not attributable to dwelling use.

(f) A statement describing how the proposal is consistent with any applicable Housing Assistance Plan, and/or Areawide Housing Opportunity Plan;

(g) Information concerning displacement of site occupants. If any displacement will occur: the number of households affected, by size and race, and the business concerns affected, by race, and whether they own or rent; the number to be temporarily or permanently displaced; the steps, if any, to be taken to minimize displacement; a demonstration that relocation is feasible; and a statement as to how necessary relocation payments will be funded (see § 880.209 for relocation requirements);

(h) A signed certification on the prescribed form of the owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968, and that the owner will undertake marketing activities to provide real opportunities to reside in the project to persons from impacted jurisdictions and persons expected to reside in the community as a result of current or planned employment, as indicated in the Housing Assistance Plan, if any.

(i) The identity of the owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants;

(j) The proposed financing method and proposed terms of financing. For proposals not requesting mortgage insurance, written evidence of review and interest by a lender which may include a state housing finance agency or financing agency under Part 811, or bond underwriter, indicating that the financing is likely to be available for the proposed project;

(k) The proposed term of the contract, and justification for the term, in accordance with § 880.502; and

(l) The identity of the contract administrator entity (PHA or HUD).

§ 880.306 Preliminary Evaluation and Technical Processing.

(a) *Preliminary Evaluation.* (1) After receipt of a preliminary proposal for a project for elderly families received prior to the deadline date in the NOFA, the field office will make a preliminary evaluation of the proposal in accordance with paragraph (a)(3) of this section. Proposals received after the deadline date will be returned unopened.

(2) After receipt of a preliminary proposal for a project for nonelderly families, the field office will, so long as contract authority remains available, make a preliminary evaluation of each such proposal in accordance with paragraph (a)(3) of this section.

(3) In performing the preliminary evaluation, the field office will determine whether it appears, without field review, that:

(i) The proposal contains all of the required documentation in the proper form; and

(ii) The proposal is responsive to and in compliance with the requirements of the NOFA, developer's packet, and program policies and regulations, including Fair Market Rent, replacement cost, and amenities limitations.

(4) If a proposal is found deficient in accordance with paragraph (a)(3) of this section, it may be rejected. If a deficiency is minor, or if there are not sufficient proposals to use the available contract authority, the field office may request correction of the deficiency within a specified time period.

(5) If the proposal is not deficient, or if necessary corrections are made within the time limit established by the field office, the proposal will be considered in accordance with paragraph (b) or (c) of this section as appropriate.

(b) *Selection for Technical Processing.* (1) In the event the number of proposals found eligible for technical processing exceeds the number that the field office can process expeditiously, the field office may limit the proposals placed into technical processing to those which comprise a total number of units approximately equal to two to four times the number of units which can be approved. In order to determine which proposals to place into technical processing, the field office will, in order to eliminate the excess, rank the proposals by household type (elderly and non-elderly) considering the following factors and such other factors as may have been recommended by the field office and approved by the Assistant Secretary:

(i) The previous experience and qualifications of the owner, developer, builder, architect, management agent, and other participants in development, marketing and management (particularly of non-elderly housing);

(ii) Responsiveness to the preferences and priorities contained in any applicable Housing Assistance Plan;

(iii) The current availability of the site for development and the availability of utilities and services;

(iv) The permissiveness of current zoning;

(v) The likelihood of financing and the relative speed with which a firm financing commitment can be obtained; and

(vi) the relative need for and prior housing assistance to the jurisdiction in which the housing would be located.

(2) Preference points in selection of proposals for technical processing will be given to small projects and partially-assisted project.

(3) The owners of proposals not selected for technical processing will be notified that their proposals will not be processed further and will not be considered for selection under the provisions of § 880.302.

(4) One copy of each proposal will be retained by the field office.

(c) *Technical Processing.*

(1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment. In accordance with OMB Circular A-95, and 24 CFR Part 891, a copy of each proposal will also be sent to the A-95 state and areawide clearinghouses.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, design, experience of the owner and other participants, local government and A-95 clearinghouse comments, extent of displacement and feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

(3) The field office will evaluate proposed rents in accordance with § 880.204(b)(2).

(i) If the proposed rents are no more than the rents determined to be comparable, or are within 110 percent of comparable rents for small and partially-assisted proposals, the rents will be accepted.

(ii) If the proposed rents exceed the comparable rents by not more than 20 percent, they can be tentatively accepted subject to cost estimation at final proposal (see §§ 880.308(a) and 880.309(a)(2)) and cost certification after completion (see § 880.405).

(iii) If the proposed rents exceed the comparable rents by more than 20 percent, the field office may either reject the proposal or tentatively accept rents up to 120 percent of the comparable rents subject to cost estimation at final proposal and cost certification after completion.

(4) Amenities and design features will be reviewed to assure that they do not exceed this normally provided in housing of modest design in the general area of the proposed project.

(d) *Proposals Requiring Mortgage Insurance.* Proposals requiring mortgage insurance need not contain more information than is required for a preliminary proposal not requiring mortgage insurance. Technical processing of such proposals will include a preliminary determination of eligibility under the applicable mortgage insurance program. If such proposals are selected, subsequent processing will be in accordance with § 880.308(b), and applicable mortgage insurance requirements. If the proposal is ineligible for mortgage insurance, it may be rejected, or the field office may request the owner to submit documentation showing availability of an alternative method of financing.

§ 880.307 Selection of proposals and use of remaining or additional contract authority.

(a) All of the proposals found approvable in technical processing may be selected if sufficient contract authority is available. In no case will proposals be selected prior to completion of and without compliance with the allocation plan.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). The ranking factors are: Rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the A-95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement; and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects and partially-assisted projects. Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant

Secretary for Housing and included in the developer's packet.

(c) Owners who submit proposals will be notified in writing as to whether their proposals have been found not approvable, found approvable but not selected, or selected. Selection notifications will include any special conditions or requirements applicable to the proposal. Owners who are notified of the selection of their proposals must notify the field office of their acceptance of the notification within the time period specified in the notification and must submit a final proposal by the deadline stated in the notification unless an extension of the deadline is approved by the field office. Owners of proposals found not approvable will be notified of the reason for the finding. One file copy of each proposal will be retained by the field office. Proposals found approvable and determined to be of high quality but not selected will be retained by the field office for reconsideration when additional contract authority becomes available in the same or subsequent fiscal year (see § 880.302).

(d) Units of general local government and A-95 clearinghouses notified under § 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

(e) When contract authority remains available after selection of proposals for housing for elderly families, or after a decision is made to reallocate unused contract authority for housing for non-elderly families, or additional contract authority becomes available due to cancellation or recapture of contract authority for a selected proposal, or due to the assignment of additional contract authority within the same fiscal year, the field office will determine the allocation areas and types of housing for which the contract authority will be used in accordance with 24 CFR, Part 891 and proceed in accordance with §§ 880.302, 880.303, and 880.304.

§ 880.308 Contents of final proposal.

(a) *Proposals for Uninsured Projects.* Final proposals for all projects except those requesting mortgage insurance will contain:

(1) Preliminary architectural drawings, including site plans, landscape plans, unit plans, general floor plans, elevations at the prescribed scale, outline specifications on the prescribed form and a listing of amenities.

(2) A statement that the documentation submitted with the preliminary proposal as required by § 880.305 (b) through (g) and (i) through (l) has not changed or a statement of the changes. In the case of special categories of projects submitted in accordance with § 880.303(c), the original documentation required by § 880.305 (b) through (l) must be submitted.

(3) Description of the terms and conditions of construction and permanent financing, including copies of the financing documents and the commitments for such financing from a lender or bond underwriter, or satisfactory evidence that commitments will be forthcoming before execution of the Agreement.

(4) For proposals for projects of five units or more, an Affirmative Fair Housing Marketing Plan.

(5) A statement of the marketing activities the owner intends to take to provide real opportunities to reside in the project to persons from impacted jurisdictions and persons expected to reside in the community by reason of current or planned employment. Such efforts might include: Participation in regional or sub-regional application pools and clearinghouses; establishment of a referral system with PHAs, other public agencies and Section 8 owners/managers in the surrounding area; contact with and provision of information about the project to employers and their employees, labor unions and interested community groups.

(6) Evidence of management capability, a proposed management plan and certification in the prescribed form, a copy of any proposed contracts for management services, and the proposed form of lease (see § 880.606).

(7) An indication of the estimated time for completion of the project after the Agreement is signed and, if the project is to be completed in stages, identification of the units and the scheduled completion of each stage.

(8) Cost estimates in the HUD prescribed form of the replacement cost, operating expenses, income, and debt service, sufficient to enable the field office to determine the cost justified rent, where required under § 880.204(b)(2). The replacement cost may include the cost to the owner of relocation (except for payments to tenants permanently relocated pursuant to § 880.208(b)(8)(ii). The cost estimate must indicate and reflect any anticipated benefits from land write-down, tax abatement, favorable financing terms and similar savings.

(b) *Proposals for Insured Projects.*

(1) For projects requiring mortgage insurance, except special categories of proposals which are discussed in paragraph (b)(3) of this section, the complete final proposal will consist of the application for firm commitment, plus submissions in accordance with paragraphs (a)(2), (a)(5), (a)(6) and (a)(8) of this section.

(2) Although it is preferable for projects requiring mortgage insurance to proceed directly from preliminary proposal to the application for firm commitment/final proposal stage, an owner may elect to submit an application for SAMA or conditional commitment first. In these cases, no additional documentation other than that normally submitted for the mortgage insurance processing stage is required. SAMA letters or conditional commitments issued for mortgage-insured projects which are infeasible without Section 8 assistance will be conditioned upon the subsequent review and approval of the application for firm commitment/final proposal.

(3) In the case of special categories of proposals submitted in accordance with § 880.303 which are requesting mortgage insurance, the first proposal may be an application for conditional or firm commitment plus the proposed form of lease, applicable information on staging, if any, and the documentation required by § 880.305 (f), (g), (h), (i) (with respect to possible conflicts of interest), (k) and (l).

§ 880.309 Review of final proposals

(a) All final proposals will be reviewed for compliance with program policies and standards. Material deviations from the preliminary proposal will be reviewed and may cause rejection of the proposal.

(1) Preliminary architectural drawings will be reviewed for compliance with amenity standards. In addition, HUD reserves the right to review for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(2) The field office will review the projected replacement cost to assure compliance with the limitations of § 880.204(c) in effect at the time. The field office will also review the proposed rents to assure that the rents are within the Fair Market Rent limitations of § 880.204(b)(1) and are cost justified, where required under § 880.204(b)(2) concerning reasonable rents. Cost justification at this stage will consist of a review by the field office of the cost and expense estimates to determine whether the estimates justify the need for rents above comparable rents based on a debt service calculation.

(3) Where the final proposal requests rents higher than were approved with

the preliminary proposal, such rents may be approved only after the review required in paragraph (a)(2) of this section. In addition, the field office may approve the request for an increase only if it determines, based on documentation by the owner, that the need for increased rents is due to:

(i) Factors beyond the owner's control which could not reasonably have been foreseen;

(ii) Design changes approved by the field office which are necessary because of additional requirements imposed by governmental agencies or HUD; or

(iii) HUD-approved changes in the method or terms and conditions of financing.

(b) Each owner will be notified as to whether the final proposal has been approved, rejected, or could be approved with the submission of additional information or after correction of specified deficiencies. Notifications of approval will indicate a deadline for acceptance of the notification and, for projects not requiring mortgage insurance, a deadline for submission of working drawings and architect's certifications.

§ 880.310 Submission and review of working drawings, architect's certification and requested changes.

(a) For projects which do not involve mortgage insurance, the owner must submit working drawings and specifications to the field office for review after approval of the final proposal. The owner must also submit an architect's certification in the prescribed form that the drawings and specifications and proposed construction comply with the HUD Minimum Property Standards, local codes and ordinances, and zoning requirements. The working drawings and specifications will be reviewed for compliance with amenity standards. Any project may, at HUD's option, be reviewed for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(b) Any requests for rent increases or any material deviations from preliminary or final proposal which are submitted with the working drawings will be reviewed in the same manner as required in § 880.309(a).

(c) For projects involving mortgage insurance, working drawings are reviewed as part of the review of the application for firm commitment/final proposal.

§ 880.311 Execution of agreement (and ACC, if applicable).

(a) After review of the working drawings for compliance with amenity standards and acceptance of the architect's certification for projects not involving mortgage insurance, or at the time of initial endorsement in the case of projects involving mortgage insurance:

(1) In the case of private-owner/HUD and PHA-owner/HUD projects, HUD and the owner will execute the Agreement in the form prescribed by HUD; or

(2) In the case of private-owner/PHA projects, HUD and the PHA will execute the ACC in the form prescribed by HUD, and thereafter the PHA and the owner will execute the Agreement in the form prescribed by HUD, and HUD will approve it.

(b) No Agreement will be executed unless HUD has approved the financing for the project, including a commitment from a lender for construction and permanent financing at rates, terms and conditions acceptable to HUD, and the final proposal is in all other respects unconditionally approved.

(c) In the case of a non-elderly family project located in a Standard Metropolitan Statistical Area (SMSA), the field office will promptly notify PHAs and Community Development Agencies in the SMSA as well as any metropolitan-wide clearinghouse, or fair housing organizations where there is no metropolitan-wide clearinghouse, of the execution of the Agreement; the size and bedroom distribution of the project; and the expected time of initial marketing and occupancy. The notification will indicate that agencies should inform the owner if they wish to be contacted by the owner for referrals.

Subpart D—Construction Period and Cost Certification

§ 880.401 Timely performance of work.

(a) After execution of the Agreement, the owner must proceed promptly with construction as provided in the Agreement and complete the project within the time stated in the Agreement. If the owner fails to start promptly, or diligently continue or complete construction, the contract administrator will have the right to rescind the Agreement or take other appropriate action.

(b) Extensions of the time may be granted for the reasons stated in the Agreement. However, contract rents will be increased only for the reasons stated in § 880.403.

§ 880.402 Inspections during construction.

(a) All project records will be inspected by HUD periodically to determine compliance with Davis-Bacon Act requirements.

(b) Projects which involve HUD mortgage insurance, or another type of financing which requires HUD construction inspection, will be subject to the applicable inspection requirements.

(c) A review to determine contractor compliance with equal opportunity requirements may be conducted at any time during the construction period.

§ 880.403 Increases in contract rents or utility allowances before contract execution.

(a) Increases in contract rents or utility allowances after execution of the Agreement and prior to execution of the Contract are permitted with HUD approval only:

(1) To correct substantial errors by HUD in the original processing which would otherwise result in serious inequities;

(2) To reflect substantial and necessary changes in the plans and specifications which have been approved by HUD (no optional betterments may result in rent increases);

(3) To reflect additional costs for interest, taxes, hazard insurance, mortgage insurance premiums, and commitment fees, due to construction delays excusable under the Agreement;

(4) To reflect additional costs which result from new requirements imposed by local governments, HUD or other Federal agencies, which are beyond the control of the owner, which have been approved by HUD and which could not have been anticipated at the time the Agreement was executed; or

(5) To reflect increased costs which result from a change in contractors which is necessary because the original contractor became bankrupt, was terminated by the owner due to inadequate performance or abandoned the job.

(6) To reflect additional costs incurred by the owner in providing the relocation assistance and payments required by § 880.209 (except for payments made to tenants permanently relocated pursuant to § 880.209(b)(8)(ii)), or as a result of altering construction work schedules in order to minimize displacement, or as a result of other activities which minimize displacement or related hardships.

(b) Such increases will be:

(1) Limited to the amount necessary to cover the specific cost increase associated with the applicable item

cited in paragraph (a) of this section; and

(2) Reviewed and approved only in accordance with the Fair Market Rent and rent reasonableness limitations of § 880.204(b) and the replacement cost limitations of § 880.204(c) which are in effect at the time of the review of the request.

(c) All requests for increases must be submitted promptly to the field office for review as soon as the need for the increases becomes apparent.

§ 880.404 Project completion.

(a) *Notification and Evidence of Completion.* The owner must notify HUD and the PHA, where the PHA is the contract administrator, when work is completed and provide HUD with:

(1) A set of as-built drawings;

(2) A certificate of occupancy and any other official approvals necessary for occupancy;

(3) A certification in the prescribed form that the project has been completed and is ready for occupancy in accordance with the requirements of the Agreement; and

(4) For projects where a HUD construction inspection is not required during construction, a certification from the inspecting architect in the prescribed form which states that the project has been constructed in accordance with the certified working drawings and specifications, HUD Minimum Property Standards, local codes and ordinances, and zoning requirements.

(b) *Review and Inspection.* Within 10 working days of the receipt of the notification and evidence of completion, HUD will review the evidence of completion for adequacy and will inspect the project to determine whether it appears that the project has been completed in accordance with the Agreement.

(c) *Acceptance of the Project.* (1) If HUD determines from review and inspection that the project (or a stage of the project) has been completed in accordance with the Agreement, the project (or stage) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the project (or stage) will be accepted. An escrow fund determined by HUD to be sufficient to assure completion for items of delayed completion will be required, as well as a written agreement between the contract administrator and the owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the contract administrator may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, HUD will determine whether and to what extent the deficiencies are correctable, and whether the contract rents should be reduced. The owner will be notified of HUD's decision. If the parties agree, HUD, the owner and the PHA, where applicable, will enter into an agreement for the correction of the deficiencies. If the deficiencies are corrected within the period of time allowed, HUD will accept the project.

(4) Otherwise, the project will not be accepted, and the owner and the PHA, where applicable, will be notified with a statement of the reasons for nonacceptance. (However, see § 880.501(a) for action where evidence of completion is acceptable only with respect to physical completion of the project.)

(d) *Pending Davis-Bacon Act Claims.* If there are pending claims under the provisions in the Agreement relating to the payment of prevailing wage rates, the owner will be required to place a sufficient amount, as required by HUD, in escrow as approved by HUD to assure such payments. The amount withheld may be disbursed with HUD approval for and on account of the owner or any subcontractor to the employees to whom it is due.

§ 880.405 Cost certification and adjustment of contract rents.

(a) *Submission by owner.* As soon as possible after acceptance of the project by HUD, the owner will certify the actual costs estimated under § 880.308(a)(8), and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;

(2) For projects not insured by HUD, a simplified form of cost certification will be completed and submitted;

(3) There will be no cost certification submission required for projects with rents that are equal to or less than comparable rents or for partially-assisted projects or small projects except as required by § 880.204(b)(2); and

(4) The provisions of paragraphs (a) (2) and (3) of this section do not preclude the imposition of different cost certification requirements appropriate as part of project financing requirements (such as tax-exempt financing under 24 CFR, Part 811).

(b) *HUD Review.* Cost certifications required by this regulation will be subject to review by HUD. As part of this review, the owner and/or contractor may be required to submit additional documentation.

(c) *Reduction of Contract Rents.* If the owner's certified costs provided in accordance with paragraph (a) of this section, as approved by HUD, are less than the cost estimate provided for in § 880.308(a)(8), the contract rents will be reduced accordingly.

(d) *Reduction of Maximum Annual Commitment.* If the contract rents are reduced pursuant to paragraph (c) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of private-owner/PHA projects) will be reduced. If contract rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the owner by HUD.

Subpart E—Housing Assistance Payments Contract

§ 880.501. The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project. If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion as required in § 880.404 in other respects is not acceptable, the field office will, upon request by the owner, execute or approve the execution of the Contract. In such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office:

(1) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit; and

(2) Rent-up and occupancy will be subject to such conditions as the field office may require.

(b) *Effective Date of Contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date HUD inspects and

accepts the project, except as provided in paragraph (a) of this section.

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in § 880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Additional Housing Assistance Payments to Families.* In those cases where the total family contribution of a family leasing an assisted unit is less than the utility allowance for the unit, the difference will be paid to the family as an additional housing assistance payment. The Contract will provide that the owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the owner in trust solely for the purpose of making the additional payment.

§ 880.502 Term of contract.

(a) *Term (Except for Mobile Homes).* The term of the Contract will be as follows:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.

(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or (iii) 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Maximum Term for Mobile Homes.* For mobile home projects, the maximum initial term of the Contract is 5 years, subject to renewal by the contract administrator (and HUD if the contract administrator is a PHA), for additional terms of not more than 5 years up to a maximum total term of 20 years. In this paragraph, the term "mobile home" means the original mobile home and any replacement(s) combined.

(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

§ 880.503 Maximum Annual Commitment and Project Account.

(a) *Maximum Annual Commitment.* Where HUD is the contract administrator, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. Where the PHA is the contract administrator, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus an administrative fee for the PHA as approved by HUD.

(b) *Project Account.*

(1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.

§ 880.504 Reduction of number of units covered by contract.

(a) *Limitation on Leasing to Ineligible Families.* Owners may not lease more than 10 percent of the assisted units in a project to ineligible families without the prior approval of HUD. Failure on the part of the owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section.

(b) *Reduction for Failure to Lease to Eligible Families.* If, at any time beginning six months after the effective date of the Contract, the owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with his obligations under the Contract, and

(3) Contract authority is available.

§ 880.505 Contract administration and conversions.

(a) *Contract Administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract.The PHA or HUD may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA Fee for Contract Administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR Part 883) where a state housing finance agency is the PHA and finances the project.

(c) *Conversion of Projects from One Ownership/Contractual Arrangement to Another.* Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:

(1) The owner, the PHA and HUD agree,

(2) HUD determines that conversion would be in the best interest of the project, and

(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 880.506 Default by owner—private-owner/HUD and PHA owner/HUD projects.

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner—private owner/PHA projects.

(a) *Rights of Owner if PHA Defaults under Agreement or Contract.* The ACC, the Agreement and the Contract will provide that, in the event of failure of the PHA to comply with the Agreement or Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement or Contract and meet the obligations of the PHA under the Agreement or Contract including the obligations to enter into the Contract.

(b) *Rights of HUD if PHA Defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.

(c) *Rights of PHA and HUD if Owner Defaults under Contract.* (1) The Contract will provide that if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

(3) The owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide real opportunities to reside in the project to persons from impacted jurisdictions, persons who are least likely to apply as determined in the affirmative marketing plan, and persons expected to reside in the community by reason of current or planned employment.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units. (See §§ 880.501 (c) and (d) and § 880.611.)

(b) *Management and Maintenance.* The owner is responsible for all management functions (including selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for Services.* With HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of Financial and Operating Statements.* After execution of the Contract, the owner must submit to the contract adminstrator:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of Project Funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with § 880.602 and to provide distributions to the owner as provided in § 880.205. Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an

interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(2) Partially-assisted projects are exempt from the provisions of this section.

(3) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions.

§ 880.602 Replacement Reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) An amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(2) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(3) All earnings including interest on the reserve must be added to the reserve.

(4) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(b) Partially-assisted projects are exempt from the provisions of this section.

(c) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(b) *Determination of Eligibility and Selection of Tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with 24 CFR Parts 812 and 889, and for the selection of families.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has the right to meet the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he has the right to request a review by HUD of the PHA's determination. The applicant may also exercise other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Income Mix.* In the initial renting of assisted units, the owner must lease at least 30 percent of the assisted units to very low-income families. After initial renting, the owner must use his best efforts to maintain at least 30 percent occupancy by very low-income families. In addition, at all times, the owner will use his best efforts to achieve leasing to families with a range of incomes so that the average of incomes of all families in occupancy is at or above 40 percent of the median income in the area.

(d) *Reexamination of Family Income and Composition.* (1) The owner is responsible for reexamining the income and composition of all families at least once each year (except that reviews may be made at intervals no longer than two years in the case of elderly families) and, upon verification of the information provided by the family, making appropriate adjustments in the total family contribution in accordance with the provisions of 24 CFR Part 889. The owner will adjust tenant rent and the housing assistance payment in accordance with any change in total family contribution. The owner may schedule reexaminations at intervals of less than one year when it is not possible to make a reasonable estimate of the family's income for a full year.

(2) If the family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the owner, upon receipt of verification of the decrease in income, must promptly make appropriate adjustments in the total family contribution. The owner may require families to report increases in income between scheduled reexaminations.

(3) A family's eligibility for housing assistance payments continues until its total family contribution equals the total housing expense for the unit it occupies. The termination of eligibility at this point will not affect the family's other rights under the lease nor will such termination preclude resumption of payments as a result of subsequent changes in income or other circumstances during the term of the contract.

§ 880.604 Tenant rent.

The tenant rent is paid directly to the owner by the eligible family to whom an assisted unit is leased in partial payment of the contract rent. It is equal to the family's total family contribution minus any utility allowance for the unit. If the family's total family contribution is less than the utility allowance for the unit which it occupies, the tenant rent payable by the family to the owner is zero.

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is

larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of § 880.611.

§ 880.606 Lease requirements.

(a) *Term of Lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

§ 880.607 Termination of tenancy and modification of lease.

(a) *Applicability.* The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) *Entitlement of Families to Occupancy.*—(1) *Grounds.* The owner may not terminate any tenancy except upon the following grounds: (i) Material noncompliance with the lease; (ii) Material failure to carry out obligations under any State landlord and tenant act; or (iii) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of Good Cause.* The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iii) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) *Material Noncompliance.* The term material noncompliance with the lease includes (i) one or more substantial violations of the lease, or (ii) repeated minor violations of the lease which disrupt the livability of the building adversely, affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a material noncompliance with the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination Notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iii) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(d) *Modification of Lease Form.* The owner may, with the prior approval of HUD, modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by § 880.609 and other applicable HUD regulations.

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's total family contribution or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not

preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from HUD or the PHA, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner; or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest.

Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

§ 880.609 Adjustment of contract rents.

(a) *Automatic Annual Adjustment of Contract Rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR Part 888.

(b) *Special Additional Adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall Limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

§ 880.610 Adjustment of utility allowances.

The owner must recommend to the contract administrator, in connection with annual and special adjustments of contract rents, and at other times if appropriate, whether and to what extent the utility allowance for any assisted unit should be adjusted. Whenever a utility allowance for a unit is adjusted, the owner will promptly notify the families occupying assisted units and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies During Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a), (2) and (3) and § 880.611(b)(2) and (3); and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with § 880.607.

(d) *Vacancies for Longer than 60 Days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of Double Compensation for Vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition, for private-owner/PHA projects, HUD:

(1) Will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

(2) May independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., October 5, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 79-31714 Filed 10-12-79; 8:45 am]

BILLING CODE 4210-01-M

Federal Register

Monday
October 15, 1979

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; October, 1979

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; October, 1979

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of October 1, 1979 of one rescission and 31 deferrals contained in the first special message for FY 1980. This message was transmitted to the Congress on October 1, 1979.

Rescissions (Attachment A)

Attachment A reflects the rescission proposal of $114 thousand contained in the first special message for FY 1980 transmitted to the Congress on October 1, 1979.

Deferrals (Attachment B)

On October 1, 1979, $1,000.4 million in 1980 budget authority was being deferred from obligation and another $2.7 million in 1980 obligations was being deferred from expenditure. Attachment B shows the status of the deferrals reported by the President in the first special message for FY 1980 transmitted to the Congress on October 1, 1979.

James T. McIntyre, Jr.,
Director.

BILLING CODE 3110-01-M

AS OF OCT. 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
OTHER INDEPENDENT AGENCIES							
International Communication Agency							
Special international exhibitions							
BA	R80- 1		114	10 1 79			
TOTAL BA			114				

PAGE 1 ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/26/79 13:48

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	BA	D80- 1	100,000		10 1 79				100,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales	BA	D80- 2	9,298		10 1 79				9,298
Expenses, brush disposal	BA	D80- 3	32,060		10 1 79				32,060
Restoration of forest lands	BA	D80- 4	38		10 1 79				38
DEPARTMENT OF AGRICULTURE TOTAL	BA		41,396						41,396
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Construction	BA	D80- 5	7,000		10 1 79				7,000
Coastal zone management	BA	D80- 6	20,000		10 1 79				20,000
Promote and develop fishery products and research	BA	D80- 7	2,400		10 1 79				2,400
Fisheries loan fund	BA	D80- 8	5,300		10 1 79				5,300

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980

AS OF 09/26/79 13:48

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
DEPARTMENT OF COMMERCE								
TOTAL BA		34,700						34,700
DEPARTMENT OF DEFENSE-MILITARY								
Military Construction								
Military construction, all services								
BA	D80- 9	31,386		10 1 79				31,386
DEPARTMENT OF DEFENSE-CIVIL								
Wildlife Conservation, Military Reservations								
Wildlife conservation, all services								
BA	D80-10	595		10 1 79				595
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy construction								
BA	D80-11	50,000		10 1 79				50,000
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital								
BA	D80-12	23,314		10 1 79				23,314
Human Development Services								
White House Conferences on Aging and Families								
BA	D80-13	4,649		10 1 79				4,649
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
TOTAL BA		27,963						27,963

PAGE 3 ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/26/79 13:48

AMOUNTS IN THOUSANDS OF DOLLARS

AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
DEPARTMENT OF THE INTERIOR									
Heritage Conservation and Recreation Service									
Land and water conservation fund	BA	D80-14	30,000		10 1 79				30,000
Geological Survey									
Payments from proceeds, sale of water	BA	D80-15	39		10 1 79				39
Bureau of Mines									
Drainage of anthracite mines	BA	D80-16	1,137		10 1 79				1,137
DEPARTMENT OF THE INTERIOR TOTAL	BA		31,176						31,176
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilities	BA	D80-17	22,853		10 1 79				22,853
DEPARTMENT OF STATE									
Other									
Emergency refugee and migration assistance fund	BA	D80-18	5,650		10 1 79				5,650
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Civil supersonic aircraft development termination	BA	D80-19	5,004		10 1 79				5,004
Facilities & equip. (Airport & airway trust fund)	BA	D80-20	138,211		10 1 79				138,211

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
Urban Mass Transportation Administration									
Urban mass transportation fund	BA	D80-21	393,076		10 1 79				393,076
DEPARTMENT OF TRANSPORTATION TOTAL BA			536,291						536,291
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance fund	BA	D80-22	79,548		10 1 79				79,548
	O	D80-23	2,735		10 1 79				2,735
Bureau of the Mint									
Construction of mint facilities	BA	D80-24	3,230		10 1 79				3,230
DEPARTMENT OF THE TREASURY TOTAL BA			82,778						82,778
TOTAL O			2,735						2,735
OTHER INDEPENDENT AGENCIES									
Federal Emergency Management Agency									
Emergency planning, preparedness, and mobilization	BA	D80-25	80		10 1 79				80
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims	BA	D80-26	1,800		10 1 79				1,800
International Communication Agency									
Acquisition & construction of radio facilities	BA	D80-27	10,973		10 1 79				10,973

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AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
National Alcohol Fuels Commission									
Salaries and expenses	BA	D80-28	250		10 1 79				250
National Commission on Social Security									
Salaries and expenses	BA	D80-29	250		10 1 79				250
Navajo & Hopi Indian Relocation Commission									
Salaries and expenses	BA	D80-30	5,300		10 1 79				5,300
Tennessee Valley Authority									
Tennessee Valley Authority fund	BA	D80-31	17,000		10 1 79				17,000
OTHER INDEPENDENT AGENCIES TOTAL BA			35,653						35,653
TOTAL BA			1,000,441						1,000,441
TOTAL O			2,735						2,735

[FR Doc. 79-31755 Filed 10-12-79; 8:45 am]
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Federal Register

Monday
October 15, 1979

Part V

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Environmental Impact and Related Procedures; Proposed Rulemaking and Notice of Proposed Supplementary Guidance and Procedures

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 771

49 CFR Part 622

[FHWA Docket No. 79-26]

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration [FHWA] and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) issued regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). The CEQ regulations require each Federal agency to publish implementing procedures that apply the CEQ regulations to programs administered by the agencies. The proposed regulations published here are the coordinated responses of FHWA and UMTA to the CEQ regulations and the implementing procedures issued by the Department of Transportation (DOT). The FHWA/UMTA regulations will establish requirements for applicants for Federal funds under the programs of these two agencies and procedures for UMTA and FHWA to follow.

DATES: Comments must be received on or before November 14, 1979. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 79-26, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Dale Wilken, Office of Environmental Policy, 202-426-0106, or Irwin Schroeder, Office of the Chief Counsel, 202-426-0791. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday. UMTA: Peter Benjamin, Office of Transit Assistance, 202-472-2435, or John Collins, Office of the Chief Counsel, 202-426-1906. Office hours for UMTA are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: After an extensive public comment period the CEQ issued final regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.). The CEQ regulations were published on November 29, 1978 (43 FR 55978), and codified as 40 CFR Parts 1500-1508. The original draft of the CEQ regulations was published on June 9, 1978, and over 300 comments were received and considered in the development of the final version.

CEQ said in its regulation that:

> The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and the spirit of the Act. (40 CFR 1500.1(a))

In response to the CEQ regulations, the Department of Transportation (DOT) published DOT Order 5610.1C for comment on May 31, 1979 (44 FR 31341) and in final form on October 1, 1979 (44 FR 56420). The DOT Order establishes general procedures and requirements for the consideration of environmental impacts by agencies within DOT. The CEQ regulations and the DOT Order should be consulted as source materials on environmental procedures. Both encourage operating administration such as FHWA and UMTA to develop implementing procedures consistent with theirs. Because neither the CEQ regulations nor the DOT Order contain specific procedures necessary for the grant programs administered by FHWA and UMTA, both administrations decided to issue their own procedures.

FHWA and UMTA were originally developing separate procedures to implement the CEQ regulations and the DOT Order. However, in an effort to reduce red tape for applicants for funds from FHWA and UMTA and to enhance the consideration of alternatives that are developed as part of the environmental review process, FHWA and UMTA redirected their efforts to develop the coordinated regulations that are published here. As an aid to applicants who deal only with FHWA or only with UMTA, the proposed FHWA regulation will be published separately as 23 CFR Part 771 and the proposed UMTA regulation will be published separately as 49 CFR Part 622. However, for those agencies and individuals that are involved with projects of both FHWA and UMTA, the similarities of the two proposed regulations should be readily apparent.

First, the 23 sections of each proposed regulation have a one-to-one correspondence with each other so that provisions can be easily compared. For example, 23 CFR *771.211* and 49 CFR *622.211* contain the requirements for draft environmental impact statements for FHWA and UMTA respectively. Subpart A of each proposed regulation establishes basic ground rules that are identical for the two agencies. The procedures in Subpart B of each are different, but this is due to differences in the statutory programs (most significant FHWA programs are formula based and are funded from a Trust Fund while UMTA manages a large discretionary program that is funded from general revenues), differences in the type of applicants (FHWA deals mainly statewide agencies that enjoy a special status under NEPA while UMTA generally does not deal with statewide agencies), and differences in the degree of Federal decentralization (FHWA has offices in each state while UMTA only has 10 regional offices). Both proposed regulations refer to related sections of the CEQ regulations in parentheses where appropriate.

FHWA and UMTA are also coordinating efforts in the development of major urban transportation projects. On December 7, 1978, FHWA and UMTA issued a notice of proposed rulemaking titled "Major Urban Transportation Investments" (43 FR 57478). The proposed rule would require a cost-effectiveness analysis of alternatives for major highway and mass transportation investments proposed for urbanized areas. Under this proposal, there will be a number of projects jointly administered by UMTA and FHWA for which the cost-effectiveness analysis will be summarized in the environmental documents prepared for the projects.

The CEQ regulations require agencies to publish their implementing procedures by July 30, 1979. FHWA and UMTA have consulted with CEQ in the development of these procedures as requested by CEQ. In April of 1979, FHWA and UMTA jointly requested an extension of time beyond July 30, to permit an opportunity for public comment on their procedures in proposed form. The request was denied by CEQ.

Based on the considerations discussed above, FHWA and UMTA had intended to issue their procedures as "emergency regulations" within the meaning of Executive Order 12044 (43 FR 12661; March 24, 1978) and the DOT regulatory

policies and procedures (44 FR 11034; Feb. 26, 1979) which implement that executive order. Public comment would have been invited for a period of 60 days from the date of publication, and final regulations would then have been issued after review of the comments received. This approach was changed in response to a June 13 memorandum from CEQ to all Federal agency NEPA Liaisons emphasizing the importance of receiving public comments before making any new NEPA procedures effective. Thus, the Administrators of FHWA and UMTA have decided to publish these procedures as a notice of proposed rulemaking.

Although, with the notable exception of Federal-aid highway project development, the operations of FHWA and UMTA have been governed directly by the CEQ regulations since July 30, it is still very important to their respective grant programs that final regulations be promulgated as soon as possible. In light of the need to expedite the issuance of final regulations, and in recognition of the public's previous opportunity to comment on both the CEQ regulations and DOT Order 5610.1C, it has been determined to offer a 30-day period for public comment.

Comments are invited on the procedures, format, and substance of these proposed regulations. Comments are also requested on the possibility of further combining, consolidating and simplifying the FHWA and UMTA procedures.

In addition to implementing the procedural provisions of NEPA and the CEQ regulations, the proposed regulations also contain a section on Section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f); also 23 U.S.C. 138). Comments are also requested on these Section 4(f) provisions and, in particular, on § 771.223(c) and § 622.223(c) of the proposed regulations which would alter the manner by which DOT determines the significance of historic sites for the purpose of determining the applicability of Section 4(f) to these sites. Under regulations (36 CFR Parts 63 and 800) developed in response to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470 et seq.), historic sites of national, State, or local significance are identified and receive Section 106 protection based on a determination by the Secretary of the Interior that such sites are eligible for or should be placed on the National Register of Historic Places. State and local officials are given ample opportunity to participate in this process under the Section 106 regulations. Similarly, Section 4(f) applies to historic sites which are determined to have national, State, or local significance by the Federal, State, or local officials having jurisdiction over the site. The Section 106 procedures assure that all such significant and potentially significant sites are identified. (See 36 CFR Part 63; 36 CFR 800.4(a).) The requirements of Section 4(f) can then be applied when the land from the site in question will be used by an FHWA or UMTA funded project. Therefore, to lessen the administrative overlap between the two statutes, it is proposed that Section 4(f) would apply only to those sites included on or eligible for inclusion on the National Register of Historic Places.

All responses to this publication will be available for examination by any interested person at the above address both before and after the closing date for comments. Final regulations will be issued after review of the comments received from other agencies, the public, and CEQ. The proposed FHWA/UMTA regulations will also be revised, as necessary, to be consistent with the final DOT Order.

The final FHWA regulation will also be issued as Volume 7, Chapter 7 Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2), which is provided directly to the States and is available for inspection and copying under 49 CFR Part 7, Appendix D. Based on past experience, FHWA has found that housekeeping procedures (e.g., distribution instructions) and detailed explanatory guidance (e.g., suggested format and content of environmental documents) are more useful in the form of separate reference documents. FHWA thus plans to issue that material in appendices to FHPM 7-7-2. These proposed appendices are being published for public information and comment in this same special part of today's Federal Register under the "Notice" heading. Comments on the proposed appendices should also be submitted to FHWA Docket No. 79-26.

Note.—The Federal Highway Administration and the Urban Mass Transportation Administration have determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Dale Wilken or Peter Benjamin at the address specified above.

In consideration of the foregoing, and under the authority of 42 U.S.C. 4321 et seq., 23 U.S.C. 315 and 49 U.S.C. 1601 et seq., and the delegations of authority at 49 CFR 1.48(b) and 1.51, it is proposed to amend Chapter I of Title 23 and Chapter VI of Title 49, Code of Federal Regulations, by revising Part 771 and adding Part 622, respectively, as set forth below.

Issued on: October 10, 1979.

Karl S. Bowers,

Federal Highway Administrator.

Lillian C. Liburdi,

Acting Urban Mass Transportation Deputy Administrator.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT STATEMENTS

Subpart A—General Provisions

Sec.

Subpart B—Program and Project Procedures

Authority: 42 U.S.C. 4312 *et seq.*; 23 U.S.C. 315; 49 CFR 1.48(b).

Subpart A—General Provisions

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) for implementing the National

Environmental Policy Act (NEPA) and related environmental statutes, regulations and orders. It explains how the regulations of the Council on Environmental Quality (CEQ) and the procedures of the U.S. Department of Transportation (DOT) apply to actions of FHWA.

§ 771.103 Authority and related statutes and orders.

(a) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969, as amended;

(b) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act of 1970;

(c) 23 U.S.C. 138 and 49 U.S.C. 1653(f) (Section 4(f) of the Department of Transportation Act of 1966);

(d) 23 U.S.C. 109(j);

(e) 23 U.S.C. 315;

(f) 40 CFR 1500 *et seq.*, CEQ regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(g) 49 CFR 1.48(b), DOT Delegations of Authority;

(h) DOT Order* 5610.1C, Procedures for Considering Environmental Impacts;

(i) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991;

(j) 42 U.S.C. 7401 *et seq.*, Clean Air Act, as amended;

(k) 33 U.S.C. 1251 *et seq.*, Clean Water Act, as amended;

(l) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(m) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(n) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(o) 16 U.S.C. 1533, Section 7 of the Endangered Species Act, as amended;

(p) Executive Order 11988, Flood Plain Management, as implemented by 23 CFR Part 650, Subpart A;

(q) Executive Order 11990, Protection of Wetlands, as implemented by DOT Order* 5660.1A.

§ 771.105 Policy.

(a) It is the policy of the FHWA that in the development of agency actions:

(1) A systematic interdisciplinary approach be used to assess the beneficial and adverse social, economic, and environmental effects;

(2) Efforts be made to improve the relationship between human-kind and the envrionment and to preserve the urban environment and natural and cultural resources in rural and urban areas;

(3) Significant agency actions be conducted in consultation with local, State, and Federal agencies and with the public;

(4) Decisions be made in the best overall public interest and alternative courses of action be evaluated based upon a balanced consideration of the need for safe and efficient transportation and public services and of national, State and local environmental goals; and

(5) To the fullest extent practicable, all studies, reviews and consultations under NEPA and related statutes be coordinated and accomplished as part of FHWA's compliance with NEPA.

(b) It is also the policy of FHWA that measures necessary to mitigate adverse impacts resulting from FHWA actions are eligible for funding with Federal-aid funds. Appropriate mitigation measures will be incorporated into FHWA actions when it is determined that

(1) The impacts for which mitigation is proposed actually result from the FHWA action, and

(2) The proposed mitigation represent a reasonable public expenditure when weighed against other social, economic, and environmental values.

§ 771.107 Definitions.

(a) The definitions contained in the CEQ Regulations (40 CFR Part 1508) are applicable to this regulation.

(b) "Environmental studies" are technical investigations of specific impacts. These studies provide the background technical data necessary to determine the environmental impacts of a proposed action.

(c) The "highway agency (HA)" is the agency with primary responsibility for initiating and carrying forward the action. For highway improvements financed with Federal-aid funds, the HA will normally be the appropriate State HA or the State HA in cooperation with a county or city HA. For highway improvements financed with other funds, such as forest highways, park roads, etc., the HA will be the appropriate Federal or State agency with the primary responsibility for initiating and carrying forward the action.

§ 771.109 Applicability.

(a) As supplemented by this regulation, the provisions of the CEQ Regulations (40 CFR Parts 1500 *et seq.*) are directly applicable to FHWA actions.

(b) The provisions of this regulation apply to any action over which the FHWA exercises sufficient control and responsibility to alter the development or action being planned, including any action implemented under "Certification Acceptance" procedures (23 U.S.C. 117).

(c) Where FHWA acts as a joint lead agency with other Federal agencies as provided in 40 CFR 1501.5(b), mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis with the other lead agencies, consistent with the purpose and policy of this regulation.

(d) The provisions of this regulation do not apply to or in any way affect or alter decisions, approvals, rulemaking, or authorizations which were given by FHWA pursuant to directives valid and in effect at the time of that decision, approval, rulemaking, or authorization.

(e) Section 771.111 of this regulation applies to adoption of regulations by FHWA and § 771.113 applies to proposals for legislation which are initiated by FHWA. The appropriate FHWA Washington Headquarters office (rather than the HA, Division Administrator, or Regional Administrator) will be responsible for implementing any provisions contained in this regulation which apply to adoption of regulation which apply to adoption of regulations or proposals for legislation (early coordination, draft EIS circulation, etc.).

§ 771.111 Adoption of regulations.

(a) All proposals for regulations will be evaluated by the Director of the initiating office to determine whether the regulatory proposal (1) is classified as a categorical exclusion; or (2) will require the development of an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS).

(b) If the regulation does not qualify for classification as a categorical exclusion, the Director of the initiating office will be responsible for preparation of the EA and FONSI or EIS (both draft and final) in accordance with §§ 771.207, 771.209, 771.211, and 771.213 of this regulation.

§ 771.113 Proposals for legislation (40 CFR 1506.8).

The FHWA Washington Headquarters office initiating a legislative proposal will be responsible for evaluating the environemental impacts of the proposal and, if significant impacts are involved, preparing a legislative EIS and processing it in accordance with paragraph 15(b) of DOT Order* 5610.1C.

Subpart B—Program and Project Procedures

§ 771.201 Highway improvements.

(a) In order to ensure meaningful evaluation of alternatives to proposed highway improvements and to avoid commitments to additional highway improvements before they are evaluated under this regulation, each evaluation prepared under this regulation shall address an improvement which:

(1) Is useable and a reasonable expenditure even if no additional highway improvements in the area are accomplished; and

(2) Will not restrict significant alternative routes or route locations for other reasonably foreseeable transportation improvements.

(b) The HA will complete all design work required to make those engineering and environmental decisions necessary to complete a FONSI or an EIS or to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with these processes. However, other design activities, right-of-acquisition (other than hardship cases or protective buying in accordance with current FHWA regulations), or construction shall not proceed until the following actions have been completed:

(1) The Division Administrator has received and accepted the public hearing transcripts and certifications required by 23 U.S.C. 128; and

(2) Either the action has been classified as a categorical exclusion, or a FONSI has been adopted, or a final EIS has been published and available for the prescribed length of time and a record of decision has been prepared and signed (40 CFR 1506.10).

§ 771.203 Early coordination and scoping (40 CFR 1501.7).

(a) The identification and evaluation of the social, economic, and environmental effects of a highway improvement or other Federal action and the identification of all reasonable measures to mitigate adverse impacts shall be initiated early in project planning and shall be considered along with engineering and safety factors throughout the development of the highway improvement or other Federal action. Procedures addressing the development of Federal-aid highway improvements are provided in the State Action Plans required under Part 795 of this chapter, Process Guidelines (For the Development of Environmental Action Plans).

(b) Early coordination with appropriate local, State, and Federal agencies shall be accomplished to assist in the identification of all reasonable alternatives and the evaluation of the social, economic, and environmental impacts of any proposed action and measures to mitigate adverse impacts which result from that action. (See § 795.10(b) of this chapter.)

(c) Early coordination with metropolitan planning organizations shall be accomplished where appropriate to identify regional impacts which have been assessed as part of the planning process required under 23 U.S.C. 134. (See § 795.10(b)(5) of this chapter.)

(d) In most instances, early coordination can be effectively accomplished through correspondence, meetings, etc. Formal scoping meetings may be appropriate for complex projects which involve several Federal agencies.

(e) As part of the early coordination and scoping process, all applicable Federal requirements shall be identified so that appropriate studies, analyses, and consultation can be accomplished concurrently with NEPA requirements.

(f) Any Federal agency, including Executive agencies, having or expected to have permit approval or concurrence authority or commenting responsibility on an FHWA action shall be requested to be a cooperating agency. The views of cooperating agencies shall be solicited and coordination with them continued through all stages of development of the appropriate environmental document. This coordination will be accomplished in order to preclude the necessity for any subsequent and duplicative NEPA reviews by cooperating agencies.

(g) Early notification of and solicitation of views from other States and Federal land management entities shall be accomplished by the FHWA Division Administrator as required by Section 102(2)(D)(iv) of the NEPA. The notification to other States should be mailed to the clearinghouses of those States unless a Governor has designated an agency other than the clearinghouse. The HA, in consultation with the FHWA Division Administrator, shall review any comments received from this early notification and where appropriate identify all reasonable alternatives and evaluate alternative measures to mitigate anticipated adverse impacts. The FHWA Division Administrator shall prepare a written evaluation of any issues identified during the early coordination efforts which indicate a significant disagreement with respect to an impact of the proposed action or any of the alternatives. This evaluation is to be furnished to the HA for incorporation into the EA or draft EIS.

§ 771.205 Categorical exclusions (40 CFR 1508.4).

(a) Actions which will normally be classified as categorical exclusions are those which do not involve substantial planning, time, resources, or expenditures. These actions will not induce significant, foreseeable alterations in land use, planned growth, development patterns, traffic volumes, travel patterns, or natural or cultural resources. Examples of the types of actions which are ordinarily classified as categorical exclusions are listed in the Appendix to this regulation.

(b) The HA, after appropriate environmental studies and consultation with the FHWA Division Administrator, shall identify those proposed actions that meet the criteria for categorical exclusions and shall recommend that classification to the Division Administrator. The FHWA Division Administrator, after review of the recommendations and supporting data, including consideration of environmental effects, may determine that the proposed actions are categorical exclusions or may request additional information for further study.

(c) There will be actions which may ordinarily be classified as categorical exclusions, but for which the FHWA Division Administrator may decide that special consideration is appropriate because of controversy, involvement with other Federal agencies, etc. For such actions, the FHWA Division Administrator may, when deemed appropriate, require preparation of an EA or EIS. Actions ordinarily classified as categorical exclusions which involve significant environmental impacts will require preparation of an EIS.

§ 771.207 Environmental assessment (EA) (40 CFR 1508.9).

(a) An EA shall be prepared by the HA in consultation with FHWA for each Federal action that is not classified as a categorical exclusion and for which the environmental studies and early coordination indicate that the proposed action will not have a significant impact on the quality of the human environment.

(b) The FHWA Division Administrator shall review the EA and, if satisfied that it complies with NEPA requirements, take responsibility for the EA by signing and dating the title sheet before it is made available to the public.

(c) An EA need not be circulated for comment, but its availability for public inspection shall be included in any notice for a public hearing or notice of opportunity for a public hearing.

(d) When a public hearing notice is not required, the HA shall place a notice

in a local newspaper(s), similar to a public hearing notice and at a similar stage of development, advising the public of the availability of an EA and where information concerning the Federal action may be obtained. Those who believe that the Federal action for which an EA has been prepared does in fact involve a significant impact on the human environment or who believe that the analysis of the social, economic, and environmental impacts presented in the EA is inadequate to assess their significance shall be invited to furnish written comments to the HA or FHWA summarizing the specific basis for their position. Such comments are to be furnished to the HA or FHWA within 30 days of publication of the notice in the newspaper.

(e) The HA shall provide to the FHWA Division Administrator a copy of the EA (revised, if appropriate) as well as a summary of any comments received (written or from a public hearing) and responses thereto.

§ 771.209 Finding of no significant impact (FONSI) (40 CFR 1508.13).

(a) The FHWA Division Administrator, after review of the EA and an examination of the social, economic, and environmental issues, shall, if in agreement, indicate FHWA adoption of the EA as a FONSI by changing the cover sheet designation to "Finding of No Significant Impact" and signing and dating the document.

(b) The FONSI shall be reevaluated by the HA in consultation with FHWA prior to proceeding with major project approvals or authorizations, for the purpose of determining whether there has been a substantial change in the social, economic, or environmental effects of the proposed action. If there are substantial changes in the proposed action that would significantly affect the quality of the human environment, draft and final EIS's shall be prepared and processed in accordance with this regulation. It would not be necessary, in such instance, to hold a public hearing solely for the purpose of presenting the draft EIS.

(c) Projects in the categories described in § 771.213(e) (1) and (2) of this regulation will ordinarily require preparation of an EIS. If a project in these categories is processed with an EA, copies of a draft EA will be provided to appropriate Federal, State and local agencies and made available to the public at least 30 days before the FONSI is made. Copies should also be provided for information to the FHWA Washington Headquarters.

§ 771.211 Draft EIS's (40 CFR 1502).

(a) A decision to prepare an EIS for a proposed Federal action may be made when that action clearly involves significant impacts on the human environment, or when the environmental studies and early coordination indicate significant impacts, or when review of the EA in light of comments received so indicates. When the decision has been made that an EIS shall be prepared, the FHWA Division Administrator shall forward to the FHWA Washington Headquarters the information for the "Notice of Intent" publication in the Federal Register.

(b) The draft EIS shall be prepared by the HA, in consultation with FHWA, for Federal actions which significantly affect the quality of the human environment. The FHWA Division Administrator should document FHWA involvement in the development of the EIS, particularly the consultations with the HA on environmental determinations, conclusions, and decisions.

(c) The FHWA Division Administrator shall review the draft EIS and, if satisfied that it complies with NEPA requirements, take responsibility for the draft EIS by signing and dating the title page before it is circulated for comment.

(d) The draft EIS shall be circulated for comment by the HA on behalf of FHWA and made available to the public no later than the publication date of the first notice for a public hearing or notice of opportunity for a hearing, and at least 30 days before the public hearing. The availability of the draft EIS shall be included in any public hearing notice. When no hearing is held, a notice shall be placed in the newspaper similar to the public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where comments should be sent.

(e) The draft EIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having or expressing an interest in the proposed action or the draft EIS; and

(2) Government agencies expected to have jurisdiction, responsibility, interest, or expertise in the proposed action or its impacts. The letter transmitting the draft EIS to cooperating agencies shall identify the areas requiring comments or coordination.

(f) The Federal Register public availability notice (40 CFR 1506.10(a)) will establish a 45-day period for the return of comments on the draft EIS.

(g) Comments which are received after the allotted time, but before the final EIS is forwarded to the Regional Federal Highway Administrator, are to be appended to the final EIS, where practicable, with an explanation that the comments were received late, and with an indication of the extent to which the issues raised were evaluated in the final EIS.

(h) The initial printing of the draft EIS shall be of sufficient quantity to meet requests for copies which can be reasonably expected from agencies, organizations, and individuals. Copies are to be furnished free of charge unless, in unusual circumstances, the FHWA Division Administrator concludes that a fee which is not more than the actual printing cost should be charged. The HA shall inform the FHWA of requests for draft EIS's which it is unable to fill with free copies. In these instances, the FHWA Division Administrator may ask the HA to direct the party to the nearest location where the party may review the statement.

(i) Upon request, the FHWA Division Administrator shall provide interested parties with information or status reports on EIS's and other elements of the NEPA process.

(j) The HA shall furnish copies of the draft EIS to other States and Federal land management entities which may be significantly impacted by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the FHWA Division Administrator, in writing, of any disagreement with the evaluation of impacts in the statement. Copies of the draft EIS are to be furnished to clearinghouses of other impacted States unless a Governor has designated an agency other than the clearinghouse. The FHWA Division Administrator shall review the comments received and forward them to the HA along with a written assessment of the disagreements for incorporation into the final EIS.

§ 771.213 Final EIS's (40 CFR Part 1502).

(a) A final EIS which identifies the preferred alternative shall be prepared for FHWA actions which significantly affect the quality of the human environment. The final EIS should also document compliance to the extent possible with all applicable environmental laws and executive orders, or else provide reasonable assurance that their requirements can be met. Final EIS's for highway projects shall be prepared by the HA in consultation with FHWA.

(b) The HA and FHWA Division Administrator shall make every effort to resolve interagency disagreements on proposed projects before processing the final EIS.

(c) A pending (not yet adopted) final EIS which is being processed in an

FHWA office shall be made available for review, in that FHWA office, by any individual who requests such an opportunity. Any pending final EIS available for review shall be clearly marked "PENDING, SUBJECT TO REVISION."

(d) The Regional Federal Highway Administrator shall review the final EIS, including the comments received (and the responses thereto) which are attached before processing the statement. The final EIS shall be reviewed for legal sufficiency by the FHWA Chief Counsel or his/her designee. When the Regional Federal Highway Administrator is satisfied that the final EIS complies with NEPA requirements, the final EIS shall be processed in the manner specified by paragraphs (e) through (i) of this section.

(e) The Regional Federal Highway Administrator may adopt and sign the final EIS after the regional office review is completed, except for final EIS's in the following categories:

(1) Highways on a new alignment in a metropolitan area of over 100,000 population (the metropolitan area is defined as the area designated for the purposes of 23 U.S.C. 134 transportation planning);

(2) Any new freeway, including projects which will upgrade existing highways to freeway standards for access control;

(3) Highway improvements to which a Federal, State or local government agency has expressed (i) opposition on environmental grounds (which has not been resolved to the satisfaction of the objecting agency), or (ii) intention to refer the matter to CEQ (40 CFR Part 1504); or

(4) Highway improvements for which the Federal Highway Administrator requests the Regional Federal Highway Administrator to send the final EIS to the FHWA Washington Headquarters for review.

(f) Final EIS's (with the proposed record of decision) prepared for projects in the categories in paragraph (e) of this section shall be submitted to the FHWA Washington Headquarters for prior concurrence. The FHWA Washington Headquarters will notify the Regional Federal Highway Administrator when the final EIS may be released to the public and EPA, at which time the Regional Federal Highway Administrator will adopt and sign the final EIS and ensure that distribution of the final EIS is made in accordance with current procedures.

(g)(1) After review of a draft EIS for a project in the categories in paragraph (e) of this section, the FHWA Washington Headquarters and the Office of the Secretary of Transportation may determine that individual final EIS's in these categories may be processed without prior concurrence. This determination will be based upon the following:

(i) Adequacy of early coordination with other Federal, State, and local government agencies; and

(ii) Adequacy of the draft EIS in identifying the environmental impacts of and the reasonable alternatives to the proposed action.

(2) Any determination made under this paragraph is subject to review and withdrawal at any time prior to the date the final EIS is adopted.

(h) One copy of all adopted final EIS's which are not included in the categories listed in paragraph (e) of this section shall be provided to the FHWA Washington Headquarters for program management and record keeping purposes.

(i) Copies of the final EIS should be furnished free of charge unless, in unusual circumstances, the FHWA Division Administrator concludes that a fee which is not more than the actual printing or reproduction cost should be charged.

(j) The final EIS shall be available for public review at the HA headquarters and appropriate field offices, at the FHWA Washington Headquarters, and at FHWA regional and division offices. A copy should also be made available, as appropriate, to public institutions, such as local governments, public libraries, and schools, to allow them to make it available for public review.

(k) The final EIS shall be reevaluated by the HA in consultation with FHWA prior to proceeding with major project approvals or authorizations for the purpose of determining whether there has been a substantial change in the social, economic, or environmental effects of the proposed action.

§ 771.215 Predecision referrals to CEQ (40 CFR Part 1504).

(a) Any FHWA field office which receives notice of an intended referral from another agency shall provide a copy of the notice to FHWA Washington Headquarters.

(b) The FHWA Washington Headquarters will be responsible for coordinating the response to CEQ which is necessitated by a referral.

§ 771.217 Supplemental statements.

A draft EIS or final EIS may be supplemented at any time. Supplements will be necessary when substantial changes are made in the proposed action that will introduce a new or changed environmental effect of significance to the quality of the human environment or significant new information becomes available concerning the action's environmental impacts. The decision to prepare and process a supplement to the final EIS shall not require withdrawal of previous FHWA approval actions, or void or alter previously authorized development of the highway improvement not directly affected by the changed condition or new information. A supplement is to be processed in the same manner as a new EIS (draft and final, with a record of decision).

§ 771.219 Record of decision (40 CFR 1505.2).

The Regional Federal Highway Administrator shall complete and sign a record of decision no sooner than 30 days after the Federal Register public availability notice for the final EIS or 90 days after such notice for the draft EIS, whichever is later. Any required Section 4(f) determinations shall be incorporated in the record of decision.

§ 771.221 Emergency action procedures.

Requests for deviations from these procedures in emergency situations shall be referred to the FHWA Washington Headquarters for evaluation and decision.

§ 771.223 Application of 23 U.S.C. 138 (commonly called Section 4(f)).

(a)(1) No FHWA project will use land from a significant publicly owned park, recreation area, or wildlife refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Accurate and detailed information is needed to support these determinations. Supporting information must demonstrate that there are unique problems or unusual factors present and that the cost, environmental impacts, or community disruption resulting from alternative routes reaches extraordinary magnitudes.

(b) Consideration under 23 U.S.C. 138 is not required when the Federal, State, or local official having jurisdiction over a park, recreation area or refuge determines that it is not significant. The FHWA Division Administrator shall review the official's nonsignificance determination to assure its reasonableness. In the absence of such a determination, the Section 4(f) land will be considered to be significant.

(c) The National Register of Historic Places lists historic properties of national, State and local significance. Therefore, for purposes of 23 U.S.C. 138, a historic site is significant only if it is included on or is eligible for inclusion on the National Register of Historic Places.

(d) The provisions of this section and 23 U.S.C. 138 apply to publicly owned lands that are administered for multiple uses only if the portion of land to be taken is in fact being used for park, recreation, wildlife, waterfowl, or historic purposes, or there is a definite formulated plan for such use, as determined by the official having jurisdiction over such lands. The FHWA Division Administrator shall review the official's land use determination to assure its reasonableness. (For multiple use lands, the significance determination required by paragraph (b) of this section shall be applied only to the lands actually being used for Section 4(f) purposes.)

(e) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made, and significance determinations changed, late in the development of a highway improvement. In such cases, a project may proceed without consideration under 23 U.S.C. 138 if the property interest in the Section 4(f)-type lands was acquired prior to the designation or change in significance.

(f) Any involvement with a Section 4(f) property shall be evaluated early in the planning phase of project development when alternatives for the proposed action are under study. These (draft) evaluations shall be presented in the EA or the draft EIS or, for those projects classified as categorical exclusions, in a separate draft Section 4(f) evaluation.

(g) The EA, draft EIS, or draft Section 4(f) evaluation shall be provided for coordination and comment to the public official having jurisdiction over the Section 4(f) property, and to the designated offices of the Department of the Interior and, where appropriate, the Departments of Agriculture and Housing and Urban Development. A time limit of not less than 45 days shall be established for receipt of these comments.

(h) After receipt and consideration of comments resulting from the coordination required in paragraph (g) of this section, and if the selected alternative requires the use of land from a Section 4(f) property, the HA and the FHWA Division Administrator shall ensure that the final EIS, EA, or final Section 4(f) evaluation includes information sufficient to support a Section 4(f) determination.

(i) The discussion in the final EIS, EA, or separate Section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a Section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) property.

(j) Where a project classified as a categorical exclusion has a Section 4(f) involvement, the HA shall not proceed with the activities noted in § 771.201(b) of this regulation until notified by FHWA that the Section 4(f) determination has been made.

(k) The FHWA Regional Federal Highway Administrator shall review the Section 4(f) evaluation for completeness and adequacy before making the determination required by 23 U.S.C. 138. Section 4(f) determinations for projects processed with EIS's shall be included in the record of decision. For all other actions, required Section 4(f) determinations will be prepared as a separate document.

(l) Circulation of a separate Section 4(f) evaluation will be required when (1) a modificatin of the alignment or design causes the use of Section 4(f) property after the categorical exclusion, FONSI, or final EIS is processed; (2) a modification of the alignment or design which significantly increases the impact to a Section 4(f) area is made after the Section 4(f) determination has been made; or (3) another agency is the lead agency for the environmental process. In such cases the Section 4(f) evaluation would not need to be accompanied by further NEPA documentation unless, after consultation with the FHWA offices which had review authority for the original NEPA document, a decision is made to provide supplemental NEPA documentation. In any other circumstances, separate circulation of the Section 4(f) evaluation may be authorized by the FHWA Associate Administrator for Right-of-Way and Environment.

§ 771.225 Executive Order (EO) 11988, Flood Plain Management.

The requirements of this EO are implemented in Part 650, Subpart A of this chapter, Hydraulic Design of Highway Encroachments on Flood Plains. The required "only practicable alternative finding" shall be included in the FONSI or final EIS and shall be supported by a summary of the studies and coordination which have been accomplished.

§ 771.227 Executive Order (EO) 11990, Protection of Wetlands.

(a) The provisions of this EO have been implemented by DOT Order* 5660.1A, Preservation of the Nation's Wetlands, dated August 24, 1978. With the exception of the wetlands "finding" requirement (DOT Order 5660.1A, paragraph 7h), the provisions of the DOT Order are applicable to all FHWA actions involving construction in wetlands.

(b) All EA's and draft EIS's for projects involving construction in wetlands shall include sufficient information to describe impacts to the wetlands and to allow evaluation of alternatives which would avoid and/or mitigate these impacts.

(c) For projects classified as categorical exclusions, the FHWA Division Administrator shall ensure that the project files document the evaluation of alternatives and the measures to minimize harm.

(d) The "finding" required by paragraph 7h of DOT Order* 5660.1A shall be included in the final EIS or FONSI and shall be supported by information contained in the final EIS or FONSI. The FHWA signature on the cover sheet of the final EIS or FONSI shall document FHWA adoption of the finding.

§ 771.229 Air quality conformity statement.

Draft and final EIS's shall contain a discussion of the relationship between each alternative under consideration and the transportation control measures in the applicable State air quality implementation plan. This discussion shall address conformity with the transportation control measures in the air quality implementation plan and priority towards implementation.

§ 771.231 Other agency statements.

(a) The FHWA review of statements prepared by other agencies will consider the environmental impact of the proposal on areas within FHWA's functional area of responsibility or special expertise.

(b) In general, agencies wishing comments on highway impacts usually forward the draft EIS to the FHWA Washington Headquarters for comment. The FHWA Washington Headquarters will normally distribute these EIS's to the appropriate region. The transmittal to the region will indicate to whom the region should send comments.

(c) When a regional office has received a draft EIS directly from

*DOT Orders are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

another agency, it may comment directly to the agency if the proposal does not fall within the types indicated in paragraph (d) of this section. Copies of the region's comments should be distributed as follows:

(1) Requesting agency—original and one copy.

(2) Office of the Secretary of Transportation, Office of Environment and Safety, P–20—one copy.

(3) DOT Secretarial Representative—one copy.

(4) Environmental Protection Agency (EPA)—five copies.

(5) FHWA Washington Headquarters (HEV–10)—one copy.

(d) The following types of actions contained in a draft EIS require FHWA Washington Headquarters review and such EIS's are to be forwarded to the Associate Administrator for Right-of-Way and Environment along with regional comments for processing:

(1) Actions with national implications;

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance;

(3) Legislation, regulations having national impacts, or national program proposals;

(4) Projects regarding the transportation of hazardous materials and natural gas and liquid-products pipelines; and

(5) Water resource projects.

(e) Any requests by the public for copies of comments should be referred to the agency originating the EIS.

Appendix—Categorical Exclusions

The following are examples of FHWA actions which are ordinarily considered to be categorical exclusions:

(1) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (weaving, climbing, speed change, etc.), and correcting substandard curves and intersections;

(2) Lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and railroad protective devices;

(3) Safety projects such as grooving, glare screen, safety barriers, energy attenuators, etc.;

(4) Reconstruction of existing bridges, unless on or eligible for the National Register of Historic Places;

(5) Highway landscaping and rest area projects;

(6) Construction of bus shelters and bays;

(7) Alterations to existing buildings to provide for noise attenuation, and installation of noise barriers;

(8) Temporary replacement of a highway facility which is commenced immediately after the occurrence of a natural disaster or catastrophic failure to restore the highway for the health, welfare, and safety of the public;

(9) Approval of utility installations along or across a highway;

(10) Approval of the annual Highway Safety Work Programs involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(11) Rulemaking by the Bureau of Motor Carrier Safety;

(12) Promulgation of regulations and directives to implement statutory or Executive Order requirements;

(13) Federal-aid highway system revisions under 23 U.S.C. 103;

(14) Programming activities under 23 U.S.C. 105; and

(15) Federal actions taken to administer the transportation planning process under 23 U.S.C. 134 and 307.

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—General Provisions

Subpart B—Program and Project Procedures

Authority: 49 U.S.C. 1601 et seq.; 49 CFR 1.51(f)

Subpart A—General Provisions

§ 622.101 Purpose

This regulation prescribes the policies and procedures of the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act (NEPA) and related environmental statutes, regulations and orders. It explains how the regulations of the Council on Environmental Quality (CEQ) and the procedures of the Department of Transportation (DOT) apply to actions of UMTA.

§ 622.103 Authority and related statutes and orders.

(a) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969 as amended;

(b) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act;

(c) 49 U.S.C. 1653(f), Section 4(f) of the Department of Transportation Act of 1966;

(d) Sections 3(d), 5(h), and 5(i) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*);

(e) Section 14 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1610);

(f) 40 CFR 1500 *et seq.*, CEQ regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(g) 49 CFR 1.51 DOT Delegations of Authority;

(h) DOT Order * 5610.1C, Procedures for Considering Environmental Impacts (Draft version published 5/31/79, 44 FR No. 166. pp. 31341–31351);

(i) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991;

(j) 42 U.S.C. 7401 *et seq.*, Clean Air Act, as amended;

(k) 33 U.S.C. 1251 *et seq.*, Clean Water Act, as amended;

(l) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(m) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(n) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(o) 16 U.S.C. 1533, Section 7 of the Endangered Species Act, as amended;

(p) Executive Order 11988, Flood Plain Management, implemented by DOT Order * 5650.2;

(q) Executive Order 11990, Protection of Wetlands, as implemented by DOT Order * 5660.1A;

(r) UMTA Policy on Major Urban Mass Transportation Investments, (41 FR 41512, September 22, 1976).

§ 622.105 Policy.

(a) It is the policy of the UMTA that in the development of agency actions:

(1) A systematic interdisciplinary approach be used to assess the beneficial and adverse social, economic, and environmental effects;

(2) Efforts be made to improve the relationship between man and the environment and to preserve the urban environment and natural and cultural resources in rural and urban areas;

(3) Significant agency actions be conducted in consultation with local, State, and Federal agencies and with the public;

(4) Decisions be made in the best overall public interest and alternative courses of action be evaluated based upon a balanced consideration of the need for safe and efficient transportation and public services and of national, State and local environmental goals; and

(5) To the fullest extent practicable, all studies, reviews and consultations under NEPA and related statutes will be coordinated and accomplished as part of UMTA's compliance with NEPA.

(b) It is also the policy of the UMTA that measures necessary to mitigate adverse impacts resulting from UMTA actions are eligible for funding with Federal grant funds. Appropriate mitigation measures will be incorporated into UMTA actions when it is determined that

(1) The impacts for which mitigation is proposed actually result from the UMTA action, and

(2) The proposed mitigation measures represent a reasonable public expenditure when weighed against other social, economic, and environmental values.

§ 622.107 Definitions.

(a) The definitions contained in the CEQ Regulations (40 CFR Part 1508) are applicable to this regulation. Terms which are defined by CEQ and used in this regulation include:

Categorical Exclusion.
Cooperating Agency.
Environmental Assessment.
Environmental Document.
Environmental Impact Statement (EIS).
Federal Agency.
Finding of No Significant Impact.
Jurisdiction By Law.
Lead Agency.
Legislation.
Major Federal Action.
Mitigation.
NEPA Process.
Notice of Intent.
Proposal.
Referring Agency.
Scope.
Special Expertise.
Significantly.
Tiering.

(b) UMTA defines the following words for the purpose of this regulation:

"Applicant" means a local public body or other organization that seeks financial assistance directly from UMTA under the authority provided in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) (the "UMT Act").

"Approving Official" means an employee of UMTA who has the authority to approve environmental documents (40 CFR 1508.10).

"Environmental studies" means technical investigations of specific impacts. These studies provide the background technical data necessary to assess and to determine the environmental impacts of a proposed action.

"Responsible Official" means an UMTA employee who has overall responsibility to direct, furnish guidance and participate in the preparation of environmental impact statements, to make decisions on the scope and content of statements, and to independently evaluate the statements before approval.

"UMTA in cooperation with the Applicant" means that UMTA has the responsibility to manage the preparation of the draft and final environmental impact statements. The role of the Applicant is determined by UMTA in accordance with the CEQ regulations as described below. If the Applicant qualifies for more than one role, UMTA will determine which role the Applicant will assume. Whichever role the Applicant is permitted to assume, UMTA, acting through the Responsible Official, is responsible for the decisions made on the scope and depth of analysis of the EIS, including the analysis of alternatives.

(1) *Statewide Agency.* If the Applicant is a public agency that has statewide jurisdiction and meets the requirements of Section 102(2)(D) of NEPA, the Applicant may prepare the draft and final environmental impact statements itself with the Responsible Official exercising a periodic review, comment and oversight role. This is authorized by 40 CFR 1506.2(a) of the CEQ regulations.

(2) *Joint Lead Agency.* If the Applicant is a public agency and is subject to state or local requirements comparable to NEPA, then UMTA and the Applicant may prepare the environmental impact statement as joint agencies. The Applicant may be given substantial autonomy in developing substantive portions of the draft and final EIS. This is authorized by 40 CFR 1501.5(b) of the CEQ regulations.

(3) *Cooperating Agency.* If the Applicant is a public agency that has special expertise in the proposed project, the Applicant may be a Cooperating Agency with the responsibilities described in 40 CFR 1501.6(b) of the CEQ regulations. An Applicant for Section 3 and 5 assistance under the UMT Act is presumed to be a cooperating agency. During the environmental process, UMTA discusses the scope and content of the draft and final EIS documents with the Applicant before UMTA makes decisions on the scope and depth of the analysis of the EIS. UMTA may direct the Applicant to carry out these decisions.

(4) *Other.* In all other cases, the role of the Applicant is limited to providing environmental studies and commenting on UMTA's draft and final EIS's. For example, all private institutions or firms are limited to this role.

§ 622.109 Applicability.

(a) As supplemented by this regulation, the provisions of the CEQ regulations (40 CFR 1500 *et seq.*) are directly applicable to UMTA actions.

(b) The provisions of this regulation apply to any action over which UMTA exercises sufficient control and responsibility to alter the development or action being planned.

(c) Where UMTA acts as a joint lead agency with other Federal agencies, as provided in 40 CFR 1501.5(b), mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis with the other lead agencies, consistent with the purpose and policy of this regulation.

(d) The provisions of this regulation do not apply to or in any way affect of alter decisions, approvals, rulemaking, or authorizations which were given by UMTA pursuant to directives valid and in effect at the time of that decision, approval, rulemaking, or authorization.

(e) Section 622.111 of this regulation applies to adoption of regulations by UMTA and Section 622.113 applies to proposals for legislation which are initiated by UMTA. The appropriate UMTA headquarters office will be responsible for implementing any provisions contained in this regulation which apply to adoption of regulations or proposals for legislation (early coordination, draft EIS circulation, etc.).

§ 662.111 Adoption of regulations.

(a) All proposals for regulations will be evaluated by the director of the initiating office to determine whether the regulatory proposal is (1) classified as a categorical exclusion; or (2) will require the development of an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS).

(b) If the regulation does not qualify for classification as a categorical exclusion, the director of the initiating office will be responsible for preparation of the EA and FONSI or EIS (both draft and final) in accordance with §§ 622.207 through 622.213 of this regulation.

(c) Proposed regulations will be circulated for internal UMTA comment in accordance with UMTA Circular* 1320.1A, "UMTA Directives System."

§ 662.113 Proposals for legislation (40 CFR 1506.8).

The UMTA headquarters office initiating a legislative proposal will be responsible for evaluating the environmental impacts of the proposal and, if significant impacts are involved, preparing a legislative EIS and processing it in accordance with paragraph 15(b) of DOT Order* 5610.1C.

Subpart B—Program and Project Procedures.

§ 662.201 Timing of UMTA actions.

(a)(1) *Segmentation of Actions.* The proposed action covered by the environmental document should have independent utility. "Independent utility" means that the action is such that it is useful in itself and not only as part of a subsequent project. Where relevant, there should be logical termini to allow consideration of reasonable alternatives to the proposed action as well as subsequent extensions. If the action is part of a larger project to be implemented in increments, the larger project should be identified in the environmental document.

(2) The environmental document must include other projects proposed for Federal involvement which are currently under consideration and which may combine with the primary project to have significant interrelated environmental effects. If these other projects have not yet received commitments of Federal funds then the environmental document must consider the environmental impact of the primary project both with and without the additional projects.

(b) *Limitation on UMTA Approvals.* UMTA will not authorize project development (other than grants necessary to obtain engineering and environmental data to prepare an environmental document or to comply with other environmental laws and regulations), land acquisition (other than hardship cases or protective buying), or construction until the following actions have been completed:

(1) The action has been classified as a categorical exclusion, or

(2) A finding of no significant impact has been approved, or

(3) At least 30 days have elapsed since the final EIS was filed with EPA (Federal Register publication date) and made available to commenting agencies and the public.

§ 662.203 Early coordination.

(a) *Classes of Action.* (40 CFR 1501.4(a)) There are three classes of action which prescribe the level of documentation required in the NEPA process. Using the early notification procedure described in § 622.203(b), UMTA determines the class of action and, thus, the environmental document required. This involves a determination of whether or not an action significantly affects the quality of the human environment. Judging the significance of an action and its effects requires consideration not only of the severity of the impacts but also of the setting and context of the action. Guidance in determining the significance of an action and its effects is given in 40 CFR 1508.27 of the CEQ regulations. The three classes of action are:

Class 1

Actions that normally have significant impact on the environment and thus require an environmental impact statement. Procedures to be followed are described in §§ 622.211 and 622.213. These actions are—

—New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway). These projects would be expected to cause major shifts in travel patterns and land use.

—Major transit-related development whose construction involves demolition of a large number of existing buildings, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns.

Class 2

Actions that normally do not have significant impact on the environment and thus do not require an environmental impact statement or environmental assessment. These actions are termed categorical exclusions. Procedures to be followed are described in § 622.205. These categorical exclusions are:

—Operating assistance to transit authorities to continue existing service or increase service to meet demand.

—Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

—Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing service facilities or new facilities which themselves are within a categorical exclusion.

—Track and railbed maintenance and improvement when carried out within existing exclusive rights-of-way.

—Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the use of the facility.

—Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

—Installation of signs, small passenger shelters, and traffic signals where no substantial land acquisition or traffic disruption will occur.

—Construction of new bus storage and maintenance facilities in areas predominantly zoned for industry and located on or near an arterial street with adequate capacity to handle anticipated bus traffic.

—Advance land acquisition in which the property will not be modified, the land use will not be changed, displacements will not occur and which is undertaken for the sole purpose of preserving alternatives under consideration in the environmental process. Advance land acquisition must meet all of these criteria to be classified as a categorical exclusion. See also 622.205(c).

—Minor road improvements, curbing, land widening, and intersection improvements of access to transit facilities or improvement of services.

—Planning and technical studies which do not involve a commitment to a particular course of action.

—Grants for training and research programs that do not involve construction.

—Regulations that implement programs of financial assistance.

Class 3

Actions in which the significance of impact on the environment is not clearly

established. All actions that are not in Class 1 or Class 2 are in Class 3. An environmental assessment is prepared to determine the probable impact of the proposed action. If there is significant impact, an environmental impact statement is required. Procedures to follow for these projects are in §§ 622.211 and 622.213. Otherwise a finding of no significant impact supported by an environmental assessment is required. Procedures to follow for these projects are in § 622.207.

(b) *Early Notification.* UMTA in cooperation with the Applicant "shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values to avoid delays later in the process and to head off potential conflicts." (40 CFR 1501.2) UMTA assures early coordination through the following procedures:

(1)(i) All Federally funded planning studies for proposed transit construction projects are included in the Unified Planning Work Program (UPWP). The planning studies must include a proper level of consideration of environmental factors in the evaluation of transit alternatives to ensure a reasonable balancing of transportation needs and social, economic and environmental concerns.

(ii) Since UMTA has a responsibility for the review of these studies as a part of the annual UPWP approval process, UMTA may, if sufficient information is available and if appropriate, use this opportunity to identify for the Applicant the probable cause of action.

(iii) The identification of the class of action does not require an Applicant to commence formal environmental documentation; it should, however, assist the Applicant in determining the extent of documentation required and provide for early notice to assure the proper level of environmental consideration and involvement with other agencies at the earliest practicable time.

(2) It is recognized that an Applicant may conduct planning studies for proposed transit construction projects without Federal funding assistance. Since UMTA makes a full evaluation of environmental considerations in its decisionmaking process and since previous commitments made by the Applicant will not bias UMTA's environmental evaluation, the Applicant is strongly encouraged to begin coordination with UMTA early in the planning study to avoid unnecessary delays, repetitive analyses and commitments that may not be supportable by UMTA.

(3) All transit projects are required to be included in the Transportation Improvement Plan (TIP) before they can be funded by UMTA. These projects are reviewed as part of the annual TIP review and approval process. To provide for early environmental consideration, UMTA will, if sufficient information is available, identify the probable class of action for all projects included in the annual element of the TIP that are Class 1 or Class 2 actions and will identify all other projects as Class 3 actions.

(4) At the request of the Applicant, UMTA provides, at any time, an identification of the probable class of action of a particular proposal. UMTA will advise the Applicant, insofar as possible, of related environmental laws and regulations which would apply to the proposal and of the need for particular studies and findings which would normally be developed concurrently with the environmental document.

(5) UMTA requires the Applicant to provide information on the proposed action, setting and any other information necessary to verify the class of action. Verification of the class of action is of special concern when UMTA considers proposals that are normally classed as categorical exclusions. UMTA may change its identification of the probable class of action at any time.

(6) It is recognized that an Applicant may not include a transit project in the TIP before a substantial local commitment (e.g., funding, local consensus) has been made to a particular alternative. Since UMTA makes a full evaluation of environmental considerations in its decisionmaking process and since previous commitments made by the Applicant will not bias UMTA's environmental evaluation, the Applicant is strongly encouraged to begin coordination with UMTA early in the project development phase to avoid unnecessary delays, repetitive analyses, and commitments that may not be supportable by UMTA.

(7) UMTA may recommend at any time that an Applicant begin the environmental process to insure that the objectives and procedures of NEPA are achieved.

(c) *Additional Citizen Participation.* Interested persons can get information on the UMTA environmental process and on the status of environmental impact statements issued by UMTA from: Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D.C. 20590; Telephone (202) 472-2435. Questions on the status of environmental impact statements combined with alternatives analyses as required by the policy on major urban mass transportation investments (see § 622.229(b)) should be directed to: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590; Telephone (202) 426-2360.

§ 622.205 Categorical exclusions.

(a) Categorical exclusions, with the specific criteria or conditions which must be met, are listed in § 622.203(a) under Class 2.

(b) Any proposal for UMTA funding that is considered by the Applicant to meet the criteria for a categorical exclusion must be identified as such in the grant application. This classification is reviewed by UMTA. UMTA may require additional information to determine if the proposal meets the criteria for a categorical exclusion.

(c) There may be actions normally classified as categorical exclusions which UMTA determines are likely to involve significant impacts on the environment, substantial controversy, impacts which are more than minimal on properties protected by Section 4(f) of the DOT Act or Section 106 of the Historic Preservation Act, or are inconsistent with any Federal, State, or local law or administrative determination relating to environmental protection. For such actions, UMTA requires the preparation of an environmental assessment or an environmental impact statement.

(d) If a proposed action meets the criteria for a categorical exclusion, this classification is noted in the grant approval memorandum. Proposals meeting the criteria for categorical exclusions do not require a finding of no significant impact.

§ 622.207 Environmental assessments.

(a)(1) *Scoping.* The Applicant in cooperation with UMTA will use a scoping process for projects which require an environmental assessment to achieve the following objectives:

(i) Review segmentation issues in accordance with § 622.201.

(ii) Determine which aspects of the proposed project have the potential for environmental impact.

(iii) Identify measures to mitigate adverse environmental impacts.

(iv) Identify alternatives including those which are environmentally preferable.

(v) Identifies other environmental review and consultation requirements of § 622.103 that should be prepared concurrently with the environmental assessment.

(2) In carrying out scoping for an environmental assessment, the Applicant should consult with agencies and individuals affected by the proposed project or likely to have an interest in it. This early contact may aid the Applicant and UMTA in assessing the significance of impacts and in developing mitigation measures or identifying environmentally preferable alternatives. A summary of the contacts made and issues resolved will be included in the environmental assessment.

(b) *Environmental Assessment.* The Applicant shall prepare the environmental assessment in cooperation with UMTA. Guidance on the form and content of the environmental assessment is available from UMTA. The environmental assessment shall be a concise document which serves to:

"(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid [UMTA's] compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an [environmental impact] statement when one is necessary.

(4) [Give] brief discussions of the need for the proposal, of alternatives * * *, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." (40 CFR 1508.9)

(c) *UMTA Review.* The Applicant shall submit an environmental assessment to UMTA.

(1) UMTA will make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment. (40 CFR 1506.5(b))

(2) If necessary, the Applicant may be directed to revise the environmental assessment.

(3) UMTA will notify the Applicant when the environmental assessment is considered acceptable.

(d) *Public Comment.* (1) The environmental assessment shall be submitted by the Applicant to State and areawide clearinghouses for circulation to interested State and local government agencies under the A–95 review process as part of the grant application process.

(2) UMTA may, as a result of the scoping process, direct the Applicant to hold a public hearing on the environmental effects of the proposed action. If a public hearing is required, the environmental assessment will be available to the public at least 30 days in advance of the public hearing. The notice of the hearing will announce the availability of the environmental assessment and where it may be obtained or inspected. This public hearing may be combined with the project application public hearing.

(3) To promote informed public comment on the environmental effects of a proposed action, the Applicant is encouraged to make the environmental assessment available at any public hearing it holds on the project.

(e) *UMTA Responsibility.* (1) After review of any comments received at the public hearing or comments received through other forms of public participation and involvement, UMTA will make its own evaluation of the environmental issues. If UMTA finds that additional information is necessary, the Applicant will be directed to revise the document until it is satisfactory to UMTA, or UMTA will revise or modify the document itself.

(2) UMTA will review the environmental assessment and the results of the consultation process to determine if the proposed action significantly affects the environment. If it does, an EIS will be prepared in accordance with §§ 622.211 and 622.213. If it does not, a finding of no significant impact will be prepared in accordance with § 622.209.

(f) *Significant Impact.* If at any time in the development of an environmental assessment, UMTA determines that the proposed project will significantly affect the environment UMTA in cooperation with the Applicant, will develop an environmental impact statement in accordance with §§ 622.211 and 622.213 rather than completing the procedures of this Section. Procedures of the scoping process described in (a) that have been carried out for an environmental assessment need not be repeated if a decision is made to prepare an environmental impact statement. However, the additional scoping requirements for an environmental impact statement described in § 622.211(a) must be satisfied.

§ 622.209 Findings of no significant impact.

(a) A finding of no significant impact is prepared by UMTA for a proposed action for which UMTA has determined there are no significant impacts on the environment.

(b) UMTA will record its decision with a cover sheet and supporting attachments, where appropriate, to the environmental assessment approving it as a finding of no significant impact, giving the name of the proposed action, the location, the grant applicant, the date and signature of the approving official.

(c) The finding of no significant impact specifies any mitigation measures that are conditions of approval and contains either in the assessment or as attachments, any other environmental or related findings and documents, such as determinations under Section 106 of the National Historic Preservation Act, findings under Executive Order 11988 and Executive Order 11990, Section 4(f) statements, and other applicable requirements listed under § 622.103.

(d) After a finding of no significant impact has been made by the approving official, the document is made available to the public and to participants in the environmental assessment process. The document is sent to anyone requesting it and is available for public review, at a minimum, at the main office of the Applicant and the UMTA Regional and Headquarters Offices.

(e) If the proposed action is similar to one that normally requires an EIS or the nature of the action is without precedent, UMTA makes a proposed finding of no significant impact available for public review for 30 days before making the final decision to approve the finding of no significant impact. This will include at a minimum, a review by the Office of the Secretary and circulation by the Applicant to interested persons and agencies, including State and areawide clearinghouses. Comments on the proposed finding of no significant impact should be sent to the approving official (see § 622.107).

§ 622.211 Draft environmental impact statements.

(a) *Scoping Process.* "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping." (40 CFR 1501.7) A scoping meeting will be held for each proposed action that is the subject of an environment impact statement.

UMTA, in cooperation with the Applicant—

(1) "Invites the participation of affected Federal, State and local agencies, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds);

(2) Determines the scope (40 CFR 1508.25) and the significant issues to be analyzed in depth in the environmental impact statements;

(3) Identifies and eliminates from detailed study the issues which are not

significant or which have been covered by prior environmental review and narrows the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or provides a reference to their coverage elsewhere;

(4) Allocates asignments for preparation of the environmental impact statement among the lead and cooperating agencies with the lead agency retaining responsibility for the statement;

(5) Indicates any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration;

(6) Identifies other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with and integrated with the environmental impact statement as provided in 40 CFR 1502.25;

(7) Indicates the relationship between the timing of the preparation of environmental analyses and UMTA's tentative planning and decision making schedule." (40 CFR 1501.7(a)); and

(8) Resolves issues during the scoping process including identification of important impacts of the proposal and appropriate assessment techniques; identification of alternatives within and outside UMTA's jurisdiction; redefinition of the class of the proposed action; setting of page or time limits; and the potential for tiering.

(b) *Notice of Intent.* (1) "As soon as practicable after its decision to prepare an EIS and before the scoping process (UMTA) shall publish a notice of intent in the Federal Register * * *." (40 CFR 1501.7)

(2) "The notice briefly—

(i) Describes the proposed action and possible alternatives;

(ii) Describes (UMTA's) proposed scoping for the proposed action including * * * when and where (the) scope meeting will be held; and

(iii) States the name and address of a person within (UMTA) who can answer questions about the proposed action and the environmental impact statement." (40 CFR 1508.22)

(3) UMTA in cooperation with the Application is responsible for insuring further public awareness of the action by making the notice of intent available through—

(i) "Notice of State and areawide clearinghouses pursuant to OMB Circular A–95 (Revised)." (40 CFR 1506.6(b)(3)(i));

(ii) "Publication in local newspapers (in papers of general circulation rather than legal papers)." (40 CFR 1506.6(b)(3)(iv);

(4) The Applicant is encouraged to use other means of public notification (as described in 40 CFR 1506.6(b)(3)) to further insure responsible local involvement in the project development process.

(5) The notice of intent is published at least 15 days in advance of the scoping meeting. In extenuating circumstances, UMTA may permit a shorter notice period.

(c) *Roles and Relationships of Agencies.* (1) "Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement." (40 CFR 1501.5(b))

(2) Joint lead agencies are appropriate if more than one Federal agency either:

(i) "Proposes or is involved in the same action; or

(ii) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity." (40 CFR 1501.5)

(3) The Applicant serving as a joint lead agency is appropriate if the Applicant is subject to state or local requirements comparable to NEPA.

(4) If UMTA is a joint lead agency, UMTA establishes with other lead agencies mutually acceptable procedures for the preparation and processing of the environmental impact statement. The agreed upon procedures in no way lessen UMTA's responsibilities under the purpose and policy sections of this regulation.

(5) If there is a question of lead agency responsibility, the procedures in 40 CFR 1501.5(c) and 1501.5(e) of the CEQ regulations apply.

(6) "Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency." (40 CFR 1501.6)

(d) *Interdisciplinary Approach.* After identifying the significant issues related to a proposed action, UMTA in cooperation with the Applicant involves the necessary staff or, if appropriate, professional services available in other Federal, State, or local agencies, universities, or consulting firms so that "environmental impact statements (are) prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (Section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process." (40 CFR 1502.6)

(e) *Environmental Studies.* UMTA may request the Applicant to conduct environmental studies needed for the preparation of the draft environmental impact statement. UMTA independently evaluates the information submitted.

(f) *Preparation of Draft EIS.* UMTA in cooperation with the Applicant (see § 622.107(b)) prepares the environmental impact statement in the following manner:

(1) UMTA furnishes guidance and participates in the preparation and "independently evaluates the statement prior to its approval and takes responsibility for its scope and content." (40 CFR 1506.5(c))

(2) If UMTA in cooperation with the Applicant determines that a contractor will assist in the preparation of the draft environmental impact statement, the contractor is chosen by UMTA in cooperation with the Applicant. The contractor is recommended by the Applicant and approved by UMTA. To avoid any conflict of interest, "Contractors shall execute a disclosure statement prepared by (UMTA) and the Applicant and any other lead agency specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract (UMTA) furnishes guidance and participates in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents." (40 CFR 1506.5(c))

(3) The format of the draft environmental impact statement is as follows, unless UMTA finds a compelling reason to deviate from this format:

—Cover sheet.
—Summary.
—Table of Contents.
—Purpose of and Need for Action.
—Alternatives Including Proposed Action (Sections 102(2)(C)(iii) and 102(2)(E) of NEPA). (UMTA may choose to identify a preferred alternative at its option.)
—Affected Environment.
—Environmental Consequences (especially Sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA).
—List of Preparers.
—List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
—Index.
—Appendices (if any).

Additional guidance is contained in 40 CFR 1502.11 through 40 CFR 1502.18 of

the CEQ regulations. Guidance on the content of the draft EIS is available from UMTA.

(g) *Approval of Draft EIS.* The signature of the Approving Official on the title page of the draft environmental impact statement constitutes UMTA authorization to circulate the document to the public.

(h) *Printing.* A lead, joint lead, or cooperating agency may be responsible for printing the EIS. When UMTA has this responsibility, the document is printed by the Government Printing Office and four to six weeks should be allowed for printing. The number of copies to be printed is decided by UMTA in cooperation with the Applicant.

(i) *Circulation of the Draft EIS.* (1) UMTA in cooperation with the Applicant prepares a distribution list for the draft environmental impact statement.

(2) UMTA provides the necessary copies to the Environmental Protection Agency which will in turn publish a notice of availability in the Federal Register.

(3) The Applicant is responsible for furnishing the document to—

(i) Any "Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards." (40 CFR 1503.1(a)(1));

(ii) "Appropriate State and local agencies which are authorized to develop and enforce environmental standards." (40 CFR 1503.2(a)(2)(i));

(iii) Any agency that has requested that it receive statements on actions of the kind proposed;

(iv) The public, affirmatively soliciting comments from those persons or organizations who may be interested or affected; and

(v) State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(4) The draft EIS is available for public review through the Applicant and at the UMTA Headquarters office and appropriate UMTA regional office(s). The applicant should make copies available in local government offices, public libraries, schools, and other places accessible for public review as appropriate. The applicant shall publicize the availability of the document in newspapers of general circulation. This notice of availability should be combined with the notice of public hearing (see paragraph (k) of this section).

(j) *Comments.* (1) UMTA establishes a 45-day period (commencing with the notice of availability in the Federal Register) to solicit comments on the draft EIS. A limited extension to the circulation period may be granted upon written request if UMTA determines that there is reasonable cause for the extension.

(2) Persons commenting on the draft EIS should be as specific as possible in their comments, particularly with reference to the scope of the EIS, the adequacy of the analysis, or need for additional information. Further guidance on the specificity of comments is given in 40 CFR 1503.3 of the CEQ regulations.

(3) All written comments should be sent directly to UMTA.

(k) *Public Hearing.* (1) A public hearing is required to promote public comment on a draft environmental impact statement. The public hearing is held at least 30 days and usully no more than 45 days after the start of the draft EIS circulation period, defined as the date on which the notice of availability appears in the Federal Register.

(2) The public hearing is conducted by the Applicant in cooperation with UMTA. Decisions involving the time, place, and conduct of the hearing will be arrived at jointly.

(3) Notice of the public hearing will be made in newspapers of general circulation at least 30 days prior to the hearing date. Announcement of the public hearing should be combined with the local notice of availability of the draft EIS in newspapers.

(4) Substantive comments made at the public hearing will be addressed in the development of the final EIS. A complete record of the public hearing will be made available at the offices of the Applicant and UMTA.

§ 622.213 Final environmental impact statements.

(a) *Selection of Preferred Alternative.* After the completion of the circulation preriod, UMTA in cooperation with the Applicant will identify a preferred alternative based on an evaluation of the transportation benefits and the social, economic and environmental consequences of the alternatives studied. This evaluation will take into account the information contained in the environmental impact statement along with appropriate consideration of comments received from the public and governmental agencies.

(b) *Preferred Alternative.* (1) An identification by UMTA of the preferred alternative does not commit UMTA to approval of the final environmental impact statement;

(2) The identification of a preferred alternative does not commit UMTA to the approval of a grant request for any future funding of the preferred alternative.

(c) *Preparation of Final EIS.* (1) UMTA in cooperation with the Applicant prepares the final environmental impact statement.

(2) The primary purpose of the draft environmental impact statement is to obtain public response and comments on the adequacy of the statement or the merits of the alternatives. All substantive comments on the draft EIS received during the circulation period wil be addressed in the final environmental impact statement. The final EIS will reflect significant issues raised during the circulation of the draft EIS, consultation with citizens' groups and interested agencies to resolve these issues, and an explanation of any remaining issues that have not been resolved. The final environmental impact statement will also include the rationale for the selection of the preferred alternative and discuss commitments made to mitigate adverse environmental impacts.

(3) Guidance on the contents of a final environmental impact statement, including the methods and requirements for responding to comments are discussed in § 1503.4 of the CEQ regulations. Additional guidance is available from UMTA.

(d) *Clearance of Final EIS.* (1) Before filing the final environmental impact statement with the Environmental Portection Agency, concurrence is obtained from the UMTA Chief Counsel and the Office of the Secretary as described in paragraph 11(d)(4) of DOT Order* 5610.1C.

(2) The signature of the Approving Official on the title page constitutes UMTA authorization to circulate the final environmental impact statement; compliance with Section 14 of the Urban Mass Transportation Act, as amended; and fulfillment of grant application requirements of Section 3(d)(1) and (2) and Section 5(h) and 5(i) of the UMT Act, as amended.

(e) *Printing.* Options for printing the final EIS are the same as those for printing the draft EIS (see § 622.211(h) of these regulations).

(f) *Circulation of Final EIS.* (1) UMTA and the Applicant are responsible for circulating the final environmental impact statement as follows:

(i) UMTA provides copies to the Environmental Protection Agency, which will in turn publish a notice of availability in the Federal Register.

(ii) The Applicant is responsible for simultaneously making the final environmental impact statement available through—

(A) State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised); and

(B) Publication of a notice of availability in local newspapers (in papers of general circulation rather than legal papers) (40 CFR 1506.6(3)(iv)).

(iii) The Applicant is responsible for furnishing the final environmental impact statement to any person, organization, or agency that submitted substantive comments on the draft (40 CFR 1502.19) or requested a copy.

(iv) The final EIS is available for public review through the Applicant and the UMTA Headquarters office and appropriate regional office(s). The Applicant must make copies available in local government offices, public libraries, schools, and other places accessible for public review.

(g) *Circulation Period for Final EIS.* (1) UMTA cannot make any project approval, any funding commitments, any grant action, or other action until the later of the following dates:

(i) Ninety (90) days after publication of the notice of availability for a draft environmental impact statement.

(ii) Thirty (30) days after publication of the notice of availability for a final environmental impact statement.

(2) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement notice is published by the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently.

(h) *Project Approval.* A record of decision (see § 622.219) is incorporated into the grant approval package for the proposed project. Commitments to mitigation measures that are conditions of the grant approval shall be specified in the record of decision.

§ 622.215 Predecision referrals to CEQ.

When UMTA receives a notice of intended referral to CEQ from another Federal agency, the procedures of paragraph 10 of DOT Order*5610.1C will be followed.

§ 622.217 Reevaluation.

(a) The approval of an environmental document does not end the need for consideration of environmental factors throughout the remaining project development stages. There is a continuing effort by UMTA in cooperation with the Applicant to evaluate the probable environmental consequences of a proposed action. If new or additional information becomes available, or if changes are made in the proposed action that result in significant impacts not previously addressed in the environmental document, a reevaluation is made. This environmental reevaluation may be either a supplemental environmental impact statement, a tiered environmental impact statement, or an environmental assessment.

(b) *Supplemental EIS.* A supplemental EIS is prepared when there are substantial changes in the proposed action or where significant new information is discovered that could affect a major decision made in an earlier EIS. Thus, the supplemental EIS is prepared to allow for *reconsideration of an earlier major decision.* The supplemental EIS is processed in the same manner as the earlier draft and final EIS.

(c) *Tiered EIS.* (1) Every effort is made to complete the NEPA process in the early planning stages to insure that environmental factors are considered early in the decisionmaking process. Depending on the stage of project development, information on site-specific impacts may not be available. The enviornmental document should therefore focus on those impacts that will have the greatest bearing on the early decisions to be made. As more detailed information becomes available during further project development and refinement, site-specific impacts may be more accurately defined. If it is determined that these impacts are significant but would not alter the earlier major decision, a tiered EIS is prepared. The tiered EIS briefly summarized the earlier EIS and the issues already decided and concentrates on new and significant specific impacts.

(2) A tiered EIS is prepared with the focus on the impacts having the greatest bearing on the decision to be made while excluding from consideration issues decided on in an earlier EIS. Thus a tiered EIS assumes that *earlier major decisions are valid* but that additional evaluation is necessary.

(3) The tiered EIS is processed in the same manner as the earlier draft and final EIS.

(d) *Environmental Assessments.* (1) When it is uncertain whether a supplemental or tiered EIS is required, an environmental assessment is prepared. If it is determined that there are no new signficant impacts from the proposed action, a finding of no significant impact is made. If it is determined that there are significant impacts, then an EIS will be prepared in accordance with §§ 622.211 and 622.213.

(2) The environmental assessment is processed in accordance with § 622.207.

§ 622.219 Record of decision.

After the circulation period closes for the final EIS, UMTA may decide to proceed with the preferred alternative. This decision must be supported by a concise public record of decision that:

(a) "States what the decision is." (40 CFR 1502.2(a))

(b) Identifies all alternatives considered by UMTA in reaching its decision and specifies the alternative or alternatives that are considered to be environmentally preferable. UMTA may discuss preference among alternatives based on relevant factors such as economic and technical considerations and agency statutory missions. UMTA identifies and discusses all such factors including any essential considerations of national policy that were balanced by UMTA in making its decision and states how those considerations entered into its decision. (40 CFR 1505.2(b))

(c) "States whether all practicable means to avoid or minimze environmental harm from the alternative selected have been adopted, and if not why they were not. A monitoring and enforcement program [is] adopted and summarized where applicable for any mitigation." (40 CFR 1505.2(c))

§ 622.221 Emergency action procedures.

Deviations from Subpart B in emergency situations may be approved by the UMTA Administrator.

§ 622.223 Application of 49 U.S.C. 1653(f) (4(f) determinations).

(a)(1) Section 4(f) of the DOT Act recognizes the importance of publicly owned parks, recreation areas and wildwife refuges and any historic properties by prohibiting the use of such lands for a project or program except under the following conditions:

(i) There are no feasible and prudent alternatives to the use of such land, and

(ii) The proposed action includes all possible planning to minimize harm to such land.

(2) Any UMTA-assisted project will avoid the use of land from a significant publicly owned park, recreation area, or wildlife refuge or any significant historic site unless UMTA determines that the above conditions are met. Accurate and detailed information is needed to support these determinations. Supporting information must demonstrate that there are unique problems or unusal factors present and that the cost, environmental impacts, or community disruption resulting from alternative routes reaches extraordinary magnitudes.

(b) Consideration under Section 4(f) is not required when the Federal, State, or local government official having

jurisdiction over a park, recreation area, or wildlife refuge determines that it is not significant. UMTA reviews the official's nonsignificance determination to ensure the reasonableness of such determination. In the absence of such a determination, the park, recreation area or wildlife refuge is considered to be significant.

(c) The National Register of Historic Places lists historic properties of national, state and local significance. Therefore, for purpose of Section 4(f), a historic site is significant only if it is included in or is eligible for inclusion in the National Register of Historic Places.

(d) The provisions of Section 4(f) apply to publicly owned lands that are administered for multiple uses only if the portion of land to be used is in fact being used for park, recreation, or wildlife purposes, or there is a definite formulated plan for such use as determined by the official having jurisdiction over such lands. UMTA reviews the agency's land use determination to ensure its reasonableness. (For multiple use lands, the significance determination required by paragraph (b) of this section applies only to the lands actually being used for Section 4(f) purposes.)

(e) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and significant determinations changed late in the development of a transit project. In such cases, a project may proceed without consideration under Section 4(f) if the property interest in the Section 4(f)-type lands was acquired prior to the designation or change in significance.

(f) An evaluation of any involvement with a Section 4(f) property is made early in the planning phase of project development when alternatives for the proposed action are under study. These draft evaluations are presented in the environmental assessment or the draft EIS or, for those projects classified as categorical exclusions, in a separate draft Section 4(f) evaluation.

(g) The environmental assessment, draft EIS, or draft Section 4(f) evaluation is provided for coordination and comment to the public official having jurisdiction over the Section 4(f) property, and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. UMTA will allow at least 30 days for comment.

(h) After receipt and consideration of comments resulting from the coordination required in paragraph (g) of this section, UMTA decides if the use of 4(f) land is required. If the preferred alternative requires the use of 4(f) land, UMTA will ensure that the final EIS, finding of no significant impact, or final Section 4(f) evaluation includes information sufficient to document a Section 4(f) determination. The discussion in the final EIS, finding of no significant impact, or Section 4(f) evaluation specifically addresses:

(1) The reasons why alternatives to avoid Section 4(f) land are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) land.

(i) For those Section 4(f) involvements in projects classified as categorical exclusions, UMTA will not approve projects until the necessary Section 4(f) determinations have been made.

(j)(1) UMTA circulates a separate Section 4(f) evaluation when—

(i) A modification in the alignment or design causes the use of Section 4(f) property after the categorical exclusion, finding of no significant impact, or final EIS is processed;

(ii) A modification of the alignment or design that significantly increases the use of Section 4(f) land is made after the Section 4(f) determination has been made; or

(iii) Another agency is the lead agency for the environmental process, unless another DOT element is preparing a 4(f) statement.

(iv) When the procedures under paragraph (k) of this Section do not require an additional document.

(2) In such cases the Section 4(f) evaluation is not accompanied by further NEPA documentation unless a decision is made to provide supplemental NEPA documentation.

(k) The analysis required by Section 4(f) will involve different levels of detail when 4(f) involvement is addressed in tiered EIS's.

(1) When a broad environmental impact statement is prepared, the detailed information necessary to complete the Section 4(f) evaluation may not be available to make the required determinations. Detailed design for the assessment of impacts and the measures to minimize harm may not be available at the time that a decision is made on an alternative mode or general alignment. In these cases, an evaluation is made on the potential impact that a proposed action might have on Section 4(f) lands and whether those impacts could have a bearing on the decision to be made. A preliminary determination is made whether there are feasible and prudent locations or alternatives for the project to avoid the use of the 4(f) land. This preliminary determination is then incorporated in the final EIS.

(2) A Section 4(f) determination is made when additional design details are available to assess whether there are—

(i) Feasible and prudent design alternatives to the use of such land; and whether

(ii) The proposed action includes all possible planning to minimize harm.

(3) The Section 4(f) evaluation should confirm that the earlier decision to select the location is still valid. It will be presumed to be valid unless there are new or changed 4(f) impacts that could have been avoided if another location had been selected.

§ 622.225 Executive Order 11988, Flood Plain Management.

(a) DOT Order 5650.2, Flood plain Management and Protection, implementing this Executive Order, established a Departmental policy to avoid, where practicable, encroachments on flood plains by Departmental action, and to minimize the adverse impacts which such actions may have on flood plains.

(b) Whenever possible, considerations for flood plain protection will be developed concurrently with and included in the environmental documents required by these procedures.

(c) Where a significant encroachment on a flood plain is proposed, a written finding must be made that this is the only practicable alternative.

(d) This finding will be incorporated into, or attached to, the final environmental document. If no environmental document has been prepared, a separate written finding will be made.

(e) The Flood Disaster Protection Act requires that a community participate in the National Flood Insurance Program before Federal assistance is provided for construction or repair of buildings located in areas having special flood hazards as identified by the Federal Insurance Administration. Applicants for UMTA capital grant assistance must fully comply with this requirement.

§ 622.227 Executive Order 11990, Protection of Wetlands.

(a) DOT Order* 5660.1A, Preservation of the Nation's Wetlands, implementing this Executive Order, establishes a Departmental policy that new construction in wetlands be avoided unless there is no practicable alternative to the construction, and that where there is the potential for a proposed action to adversely affect wetlands, the action

*These documents are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix G.

must include all practicable measures to minimize harm to wetlands.

(b) All environmental assessments and draft EIS's for projects involving construction in wetlands shall include sufficient information to describe impacts to the wetlands, and to allow evaluation of alternatives which would avoid and/or mitigate these impacts.

(c) For projects classified as categorical exclusions, documentation on the evaluation of alternatives and the measures to minimize harm will be contained in a written finding.

(d) For any major action which entails new construction in wetlands, a finding must be made that (1) there is no practicable alternative, and (2) that all practicable measures to minimize harm have been included.

§ 622.229 Application of other Federal laws, policies, and requirements.

(a) *Historic Preservation.* UMTA carries out its responsibilities under Section 106 of the National Historic Preservation Act and Executive Order 11593 concurrently with NEPA compliance, where possible. The surveys, reports, and findings required in regulations of the Advisory Council on Historic Preservation are, to the fullest extent possible, prepared concurrently with and integrated in the environmental documents required by NEPA. Consultation with the Advisory Council on Historic Preservation on the protection of historic and cultural properties can begin only after properties are identified and a determination of their eligibility for the National Register of Historic Places has been made by the Department of the Interior. Because of the time required to complete any necessary surveys and determinations, the initial consultations and actions in this process should be undertaken at the earliest practicable time.

(b) *Policy on Major Urban Mass Transportation Investments.* (1) The policy, published in the Federal Register on September 22, 1976, requires an alternatives analysis for any major investment that involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit, or busway).

(2) An environmental impact statement is required as a part of all alternatives analyses. The EIS serves as a mechanism for documenting the results of the alternatives analysis.

(3) Authorization to circulate a final EIS for a fixed guideway project constitutes UMTA's approval of the alternatives analysis for that project. This approval does not constitute project approval.

(c) *Environmental Requirements of the Urban Mass Transportation Act, as amended.* (1) Sections 3(d) and 5(i) of the UMT Act require applicants for Section 3 and 5 grants to make several certifications regarding the local decisionmaking process. Applicants will still be required to submit the statutory certification. The procedures of this regulation are designed to aid the Applicant in the environmental process by tailoring the level of detail of environment analysis to the significance of the environmental impact. The report requirement of Section 5(i)1 will be satisfied by an environmental assessment, final EIS, or an identification of the project as meeting the criteria for a categorical exclusion, where appropriate under the provisions of Subpart B.

(2) Section 5(h)2 of the UMT Act requires the Secretary of DOT to consider the environmental effects of any proposed Section 5 project and make decisions based on the public interest. The provisions of Subpart B of this regulation describe the procedures that the Secretary will follow to comply with the statutory provisions of this Section.

(3) Section 14 of the UMT Act restates the applicability of NEPA and Section 4(f) the capital grants funded under Section 3 of the UMT Act. The provisions of Subpart B of this regulation describe the procedures that the Secretary will follow to comply with the statutory requirements of this Section.

(d) *Other Requirements.* There may be other requirements for environmental protection stemming from the related statutes in § 622.103. If possible, these requirements will be identified through early consultation during the NEPA process. The final environmental document should reflect consultation with appropriate agencies and should demonstrate compliance with the requirements or provide reasonable assurance that the requirements can be met.

§ 622.231 Other agency statements.

(a) UMTA review of statements prepared by other agencies considers the environmental impact of the proposal on areas within UMTA's functional area of responsibility or special expertise.

(b) Any requests by the public for copies of UMTA comments on other agency statements will be referred to the agency originating the environmental impact statement.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 79-26]

Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Proposed Supplementary Guidance and Procedures for Environmental Impact Statement Processing.

SUMMARY: This notice is being published to provide the public with information and an opportunity to comment on explanatory guidance which the Federal Highway Administration (FHWA) proposes to issue as a supplement to its procedures for processing environmental impact statements and related documents. These procedures are being revised to implement new requirements contained in regulations issued by the Council on Environmental Quality (CEQ).

DATES: Comments must be received on or before November 14, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 79-26, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Dale Wilken, Office of Environmental Policy, 202-426-0106, or Irwin Schroeder, Office of the Chief Counsel, 202-426-0791. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: In this same special part of today's Federal Register, the FHWA and the Urban Mass Transportation Administration (UMTA) have published a notice of proposed rulemaking (NPRM) which sets forth their coordinated response to the regulations issued by CEQ (40 CFR Part 1500 *et seq.*) to implement the procedural provisions of the National Environmental Policy Act (NEPA), and to the implementing procedures issued by the Department of Transportation (DOT) as DOT Order 5610.1C (44 FR 56420; Oct. 1, 1979). Both the CEQ regulations and the DOT Order encourage operating administrations such as FHWA and UMTA to develop individualized procedures. Both FHWA and UMTA have decided to exercise that option to ensure smoother administration and better compliance within their respective grant programs.

The FHWA's current environmental impact statement (EIS) procedures are codified at 23 CFR Part 771 and have been incorporated into Volume 7, Chapter 7, Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2). The Manual contains the policies, requirements, procedures, and guidelines which apply to the Federal-aid highway program. It is provided directly to all State highway agencies and is available for inspection and copying under 49 CFR Part 7, Appendix D. Both Part 771 and FHPM 7-7-2 will be revised to incorporate the final regulation which results from the NPRM referred to above.

Based on experience under its current regulation, and in view of the direct applicability of the new CEQ regulations to its activities, FHWA has determined that certain requirements can be dropped from its current regulation and issued as explanatory guidance. Specifically, FHWA intends to eliminate the detailed requirements concerning the format and content of environmental impact statements and related documents from its regulation, and instead provide similar discussions of appropriate format and content as explanatory guidance. This guidance is to be issued in appendices to FHPM 7-7-2, and is published in this notice in proposed form for public information and comment. Certain administrative housekeeping procedures, such as detailed distribution instructions for copies of environmental documents, are also included in the proposed FHPM appendices.

Due to the close relationship of the materials in this notice and the NPRM published herewith, a common docket will be maintained. Persons wishing to comment on both need thus only prepare one set of comments. The same 30-day comment period will be provided for this notice as for the NPRM.

All responses to this publication will be available for examination by any interested person at the above address both before and after the closing date for comments. The final version of these appendices will be published after review of comments received. This publication should be concurrent with FHWA's promulgation of final regulations on environmental impact statements.

Environmental Assessment Format and Content

[Proposed Appendix B of FHPM 7-7-2]

If appropriate environmental studies and early coordination indicate that the impacts of proposed FHWA action will not be significant, and the action is not classified as a categorical exclusion, then an environmental assessment (EA) will be prepared. After the EA has been revised to reflect any comments received (from the availability notice or the public hearing), it will be reviewed and, if acceptable, adopted by the FHWA Division Administrator as a finding of no significant impact.

The CEQ regulations (40 CFR Parts 1500 *et seq.*) require that an EA include the information listed in § 1508.9. The following format is recommended for presentation of an EA.

1. *Description of the Proposed Action. Describe the length, termini, proposed improvements, etc.*

2. *Need.* Identify and describe the problem which the proposed action is designed to address. Any of the items discussed under the "Need" section in Apendix D may be appropriate in specific cases.

3. *Alternatives Considered.* Discuss any alternatives to the proposed action which were considered and why they are not proposed for adoption.

4. *Impacts.* Describe the social, economic, and environmental impacts and analyze and discuss their significance.

5. *Comments and Coordination.* Describe all early coordination efforts and all comments received from government agencies and the public.

If a proposed action requires a Section 4(f) evaluation, wetlands finding, or a flood plain finding, the information outlined in Appendix D for EIS's should be included in the EA. The EA containing the draft Section 4(f) evaluation would be circulated to the appropriate agencies for section 4(f) coordination.

Notice of Intent

[Proposed Appendix C of FHPM 7-7-2]

The FHWA Washington Headquarters will publish in the Federal Register a Notice of Intent for any FHWA action which will be the subject of an EIS. The suggested format for submitting information to the FHWA Washington Headquarters about a particular action is as follows:

Notice of Intent

1. *Description of the proposed action and possible alternatives.* This section should contain a brief narrative

description of the proposed action, e.g., location of the action, type of construction, length of the project, needs which will be fulfilled by the action. In addition, this section should contain a brief description of possible alternatives to accomplish goals of the action, e.g., upgrade existing facility, construction on new alignment, mass transit, do nothing, multi-modal design.

2. *Proposed Scoping Process.* This section should briefly describe the proposed scoping process for the particular action and should include whether, when and where any scoping meeting will be held.

3. *FHWA Contact Person.* This section should state the name and address of a person within the FHWA division office who can answer questions about the proposed action and the EIS as it is being developed.

EIS Format and Content

[Proposed Appendix D of FHPM 7-7-2]

EIS's should be printed on paper 8½ x 11 inches with all graphics folded for insertion to the same size. The wider sheets should open to the right with the title or identification on the right. The use of a standard size will facilitate administrative recordkeeping. Each EIS should have a title page headed as follows:

(EIS NUMBER [1])

(Route, Termini, City or County, and State)

Draft (Final)

Environmental Impact Statement

U.S. Department of Transportation

Federal Highway Administration

and

(State or local highway agency and any other cooperating agencies)

(This action complies with Executive Order 11988, Flood Plain Management and/or Executive Order 11990, Protection of Wetlands) [2]

Date _____

For FHWA _____

[1] The number at the top left-hand corner of the title page on all draft and final EIS's is as follows:
FHWA-AZ-EIS-74-01-D(F)(S)
FHWA—name of Federal Agency
AZ—name of State (cannot exceed four characters)
EIS—environmental impact statement
74—year draft statement was prepared
01—sequential number of draft statement for each calendar year
D—designates the statement as the draft statement
F—designates the statement as the final statement
S—designates supplemental statement
DS02—designates second draft supplemental statement

[2] To be used on the final EIS when applicable

The following persons may be contacted for additional information concerning this document:

(Name, address, and phone number of FHWA division office contact)

(Name, address and phone number of HA contact)

(One paragraph abstract of the statement.)

(Comments on this draft EIS are due by (*Date*) and should be sent to (*name and address*))

Summary Sheet

1. Brief Description of the proposed FHWA action indicating route, termini, type of highway, number of lanes, length, county, city, State, etc., as appropriate. Also list other Federal actions required because of this action, such as permit approvals, etc. Also describe any actions proposed by other government agencies in the same geographic area as the proposed FHWA action.

2. Summary of major alternatives considered.[3]

3. Summary of significant environmental impacts, both beneficial and adverse.

4. Areas of controversy (including issues raised by agencies and the public).

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Purpose and Need

Identify and describe the problem which the proposed action is designed to address. This section must clearly demonstrate that a need exists and must define the need in terms understandable to the layperson. This discussion will form the basis for the "no action" discussion in the "Alternatives" section.

The following is a list of items which will assist in development of and explanation of the need for the proposed action. It is by no means all-inclusive or applicable in every situation, and is intended only as a guide.

Transportation Demand—Including Urban Transportation Plan.

Federal, State, or local governmental authority (legislation) directing the action.

[3] The final EIS should identify the preferred alternative.

Social Demands or Economic Development—New employment, schools, land use plans, recreation, etc.

Modal Interrelationships—Information regarding how the proposed facility may interface with airports, rail port facilities, etc., should be included.

System Linkage—Is the proposed project the "connecting link"? Does it connect other highway facilities? How does it fit in the system?

Safety—Is the existing accident rate excessively high? Why? Will the proposed facility improve this? How? How Much?

Capacity—This can add to the transportation demand, social service demand or economic development. What capacity will be needed? Level of service?

Structural Condition of Existing Facility—Are maintenance costs excessive?

Alternatives

The "Alternatives" section of the draft EIS should begin with a concise discussion or summary of how the "resonable alternatives" were selected and why other alternatives were eliminated from detailed study.

The remaining part of this section should then describe accurately and clearly the "reasonable alternatives" including the "no action" alternative.

Generally, this can be best accomplished by a brief written description of each alternative, supplemented with maps and other appropriate visual aids. The material should provide a clear understanding of each alternative's termini, location, and major design features (number of lanes, right-of-way requirements, median width, etc.), which will contribute to a reader's better understanding of each alternative's effects upon its surroundings or the community.

Generally, each alternative should be developed to comparable levels of detail in the draft EIS.

It is preferable that the draft EIS be circulated sufficiently early in the project development process that a preferred alternative has not yet been identified. The draft EIS should state that all alternatives are under consideration and that a decision will be made only after the public hearing transcript and comments on the draft EIS have been evaluated.

When the final EIS is prepared, this section will generally require changes from the draft EIS. The final EIS must identify which alternative for the proposed action is preferred and why. The "why" should be explained in a concise and clear manner.

Affected Environment

This section describes the existing environmental (social-economic-environmental) setting for the area affected by all of the alternative proposals. The description should be a single general description for the area rather than a separate one for each alternative. All environmentally sensitive locations or features should be identified.

This discussion should focus on significant issues and values in order to reduce paperwork and eliminate the presentation of extraneous background material.

Prudent use of photographs, illustrations and other graphics within the text can be effective in giving the reviewer an understanding of the area.

Data and analyses in the statement should be in proportion to the significance of the impacts which will be discussed later in the document. Less important material should be summarized, consolidated, or simply referenced.

This section should also describe the scope and status of the planning process for the area. A copy of the proposed land use plan for the area should be included if available.

Environmental Consequences

This section will discuss the probable environmental effects of the alternatives and the means to mitigate adverse environmental impacts.

There are several ways of preparing this section. It is generally preferable to discuss the impacts and any mitigation measures separately for each of the alternatives. However, it may be advantageous in certain cases (where there are few alternatives) to present this section with the impacts as the headings.

Under the preferred method, consideration should be given to including a subsection which would discuss general impacts and mitigation measures which are the same regardless of the alternative selected. This would reduce or eliminate repetition under each of the alternative discussions.

It would also be helpful to have an impact/alternative comparison summary table at the end of this section.

When the final EIS is prepared, the impacts and mitigation measures associated with the selected alternative may need to be discussed in more detail than is contained in the draft EIS. This will generally depend upon the comments received on the draft EIS.

In discussing the impacts, both beneficial and adverse, the following should be included:

A summary of studies undertaken, with enough data or cross referencing to determine the validity of the methodology.

Enough information to establish the reasonableness of the conclusions concerning impacts.

A discussion of mitigation measures. In the final EIS these measures must be investigated in detail so that a commitment can be made.

In addition to normal FHWA program monitoring of design and construction activities, special instances may arise when a formal program for monitoring impacts or mitigation measures will be appropriate. In these instances, the final EIS should describe the monitoring program and reporting which will be performed.

Listed below are some of the impacts which are commonly significant on highway projects. This list is not exhaustive—on individual projects there may be a number of other impacts which may be significant.

Visual Impacts

This discussion should include an assessment of the temporary and permanent visual impacts of the proposed action. Where relevant, the EIS should document the consideration given to design quality, art and architecture in the project planning. These values may be important for facilities located in sensitive urban settings.

Social and Economic Impacts

The impact statement should contain the following:

1. Changes in life style for the neighborhoods or various groups, identified in the affected environment section, as a result of the proposed action. These changes may be beneficial or adverse. These impacts may include splitting neighborhoods, isolating a portion of a *distinct ethnic group*, new development, changed property values, etc.

2. If the proposed action will change travel patterns (e.g., vehicular, commuter, or pedestrian), identify the impact.

3. How will the proposed action affect school districts? Recreation areas? Churches? Business? etc.?

4. Are there any impacts on minority groups?

5. If the proposed action is located in or will affect an urban area, the EIS should discuss the overall impact on the physical, social, and economic urban environment.

6. What secondary impacts will affect areas of social concern mentioned above? Economic impacts can be closely related to the relocation and social impacts. In many cases, beneficial and adverse economic impacts will be integrated with the discussion of relocation and social impacts.

Relocations Impacts

A discussion of relocation impacts should contain the following information:

1. An estimate of the number of households to be displaced and a demographic profile.

2. A description of neighborhoods with available housing for relocation. (What effect would this have on services? Secondary impact?)

3. A description of the available relocation housing and the ability to provide relocation housing for the families displaced. If there is not sufficient housing available, describe action to remedy the situation including, if necessary, housing of last resort.

4. An estimate of the number of businesses to be displaced or impacted and a discussion of any relocation problems. (What would be the effect on the local economy? Secondary impact?)

5. The results of consultation with officials and community groups.

6. If unusual conditions are identified, a description of the necessary special relocation advisory services (elderly and minority groups).

Air Quality Impacts

The EIS should contain the following:

1. An identification of the relevant microscale air quality impacts of the highway section. This should include:

Predicted estimates of total concentrations at receptor sites for various alternatives.

Comparison of the estimated total concentrations for all alternatives with applicable State and national standards.

2. A discussion of the relationship between the transportation plan and program and areawide pollutants (for nonattainment areas or areas where there is an air quality maintenance plan).

3. An identification of the analysis methodology and brief summary of assumptions utilized.

4. A brief summary and documentation of early consultation with and comments from the State/local air pollution control agency or, as applicable, the indirect source review agency.

5. A statement on the relationship between each alternative under consideration and the transportation control measures in the applicable State air quality implementation plan.

Noise Impacts

If highway-generated noise is a significant factor, this discussion will include the possible noise problems and a summary of the noise analysis information. The summary should include:

1. Information on the numbers and types of activities which may be affected.
2. Extent of the impact (in decibels). This should include a comparison of the predicted noise levels with the FHWA design noise levels and the existing noise levels.
3. Noise abatement measures which would likely be incorporated into the various alternatives.
4. Noise problems for which no apparent solution is reasonably available, and the reasons why.

Water Quality Impacts

This discussion should include summaries of analyses and consultations with the agency responsible for the State Water Quality Standards. Possible impacts include: erosion and subsequent sedimentation, use of deicing and weed control products, spillage of chemicals by trucks, and contamination of ground water supplies. Coordination with the Corps of Engineers under the Federal Clean Water Pollution Control Act will assist in this area.

Stream Modification or Impoundment Impacts

This section will include a summary of information which is necessary to comply with the Fish and Wildlife Coordination Act. This legislation requires consultation with the Fish and Wildlife Service and the appropriate State agency when a Federal action involves impoundment (surface area of ten acres or more), diversion, channel deepening or other modification of a stream or body of water.

Wetlands and Coastal Zone Impacts

Discuss significant impacts on wetlands and coastal zones, including analyses, consultations, and efforts to reduce the impact. Where applicable, the discussion should set forth any inconsistencies with wetlands management programs.

The draft EIS should contain sufficient information to allow evaluation of alternatives to construction in the wetlands and practicable measures to minimize harm to the wetlands.

When there is no practicable alternative to an action which involves new construction located in wetlands, the final EIS should contain the finding required by EO 11990 and by paragraph 7h of DOT Order 5660.1A in a separate subsection titled "Wetlands Finding." The finding should contain, in summary form and with reference to the detailed discussions contained elsewhere in the EIS:

1. Reference to EO 11990.
2. Discussion of the basis for the determination that there are no practicable alternatives to the proposed action.
3. Discussion of the basis for the determination that the proposed action includes all practicable measures to minimize harm to wetlands.
4. Concluding statement as follows: "Based upon the above considerations, it is determined that there is no practicable alternative to the proposed new construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use."

Flood Hazard Evaluation

The draft EIS should contain discussion of the following items for all proposed significant encroachments in a flood plain and for those alternatives which would significantly support flood plain development:

1. The impacts on natural and beneficial flood plain values.
2. The direct and indirect support of incompatible flood-plain development.
3. The measures proposed to minimize flood risks and adverse environmental impacts.
4. Sufficient information to permit evaluation of alternatives to the significant encroachments in the flood plain.

When there is no practicable alternative to an action which includes a significant encroachment, the final EIS should contain the finding required by EO 11988 in a separate subsection titled "Flood Plain Finding" (See 23 CFR Part 650, Subpart A).

Natural Resources Impacts

This section will include a summary of significant impacts on natural, ecological, and scenic resources which have not been previously discussed. Included in this discussion will be impacts on prime and unique farmlands, threatened and endangered species, natural land forms, groundwater resources, etc.

Energy requirements, direct and indirect costs and benefits, and the conservation potential of each of the alternatives should be discussed if significant impacts are involved.

Land Use Planning Impacts

This discussion should include an assessment of the growth-inducing potential of the proposed action. If increased pressure for development is anticipated, the discussion should include an assessment of the kind of development that is expected to occur, and where and when it is expected to occur. Any factors which might be used by local governments to influence development rates (such as zoning, restricting utility service, etc.) should also be discussed.

An important part of this discussion is the relationship between any growth-inducing characteristics of the proposed action and the State and/or local government plans and policies with regard to growth in the area. These plans and policies will be reflected in the metropolitan area land use plan or in other plans for coastal zones, wilderness areas, etc. The distinction between planned growth and unplanned growth is an important one which should be emphasized.

Lastly, a description of the social, economic, and environmental impacts which can be anticipated to result from development induced by the proposed action should be included.

Historic/Cultural Site Impacts

The draft EIS should contain a discussion of the impacts that each of the alternatives will have on those sites or properties of national, State, or local historical, architectural, archaeological, or cultural significance that were identified in the "Affected Environment" section. This section should contain a record of the coordination with the State Historic Preservation Officer concerning the significance of the resource and an evaluation of the effects on the resources.

If the selected alternative has an effect on a property included in or eligible for inclusion in the National Register, the final EIS should contain (a) documentation supporting a finding of no adverse effect and a record of coordination with the Executive Director, Advisory Council on Historic Preservation (ACHP), or (b) an executed Memorandum of Agreement (MOA) (or a description of the provisions of the proposed MOA and assurances that all necessary parties are in agreement with these provisions).

Construction Impacts

The EIS should discuss significant impacts (particularly air, noise, water, detours, safety, etc.) associated with construction of each of the alternatives. Also, where applicable, the impact on

disposal and borrow areas should be discussed along with any practicable measures to minimize these impacts.

Impacts on Section 4(f) Properties

See Appendix G.

List of Agencies, Organizations and Officials To Whom Copies of EIS's Are Sent

List of all commenting entities from which comments are being requested (draft EIS), and identification of those that submitted comments (final EIS).

Comments and Coordination

1. The draft EIS should summarize the early coordination process and any pertinent information received from the public and government agencies.

2. The draft EIS should be revised, as appropriate, to reflect the consideration given to substantive comments received. The final EIS should include a copy of all substantive comments received (or summaries thereof where response has been exceptionally voluminous), along with a response to each substantive comment. When the draft EIS is revised as a result of comments received, the copy of the comments should contain marginal references indicating the page and paragraph where revisions were made, or the discussion of the comments should contain such references.

3. The final EIS should contain a summary and disposition of substantive comments made at the public hearing.

List of Preparers

This section will include lists of:

1. State (or local agency) personnel, including consultants, who were primarily responsible for preparing the EIS or performing environmental studies, and their qualifications, and

2. FHWA personnel primarily responsible for preparation or review of the EIS, and their qualifications.

Appendices

Material prepared as appendices to the EIS should:

1. Consist of material prepared in connection with the EIS (as distinct from material which is not so prepared and which is incorporated by reference),

2. Normally consist of material which substantiates an analysis which is fundamental to the impact statement,

3. Normally be analytic and relevant to the decision to be made, and

4. Be circulated with the EIS or be readily available on request.

Other reports and studies referred to in the EIS should be readily available for review or for copying at a convenient location.

Index

The index should include major subjects and significant impacts so that a reviewer need not read the entire EIS to obtain information on a specific subject or impact.

Alternate Process for Final EIS's

Paragraph 1503.4 of the CEQ regulations (40 CFR Parts 1500 *et seq.*) provides the opportunity for expediting final EIS preparation in those instances when, after receipt of comments resulting from circulation of the draft EIS, it is apparent that:

1. All reasonable alternatives were studied and discussed in the draft EIS, and

2. The analyses in the draft EIS adequately identify and quantify the environmental impacts of all reasonable alternatives.

When these two points can be established, then the final EIS can consist of the draft EIS and an attachment containing the following:

1. Errata sheets making factual corrections to the draft EIS, if applicable.

2. A section identifying the preferred alternative and discussing the reasons why it was selected and why the remaining alternatives were not selected and, if applicable:

a. Final Section 4(f) evaluations containing the information described in Appendix G,

b. Wetlands finding(s),

c. Flood plains finding(s), and

d. A list of commitments for mitigation measures for the preferred alternative.

3. Copies (or summaries) of comments received from circulation of the draft EIS and public hearing and response thereto.

Distribution of EIS'S and Section 4(f) Evaluations

[Proposed Appendix E of FHPM 7-7-2]

Environmental Impact Statements

Copies of all draft EIS's should be circulated for comment to all agencies expected to have responsibility, interest or expertise in the proposed action or its impacts.

Copies of all adopted final EIS's should be distributed to all cooperating agencies and to all Federal, State and local agencies and private organizations who commented substantively on the draft EIS.

Copies of all draft and final EIS's in the categories listed in 23 CFR 771.213(e) should be provided to the Regional Representative of the Secretary of Transportation at the same time as they are forwarded to the FHWA Washington Headquarters.

Multiple copies of all EIS's should be distributed as follows:

1. U.S. Environmental Protection Agency (EPA) Headquarters: Five copies of the draft EIS and five copies of the final EIS (this is the "filing requirement" covered in Section 1506.9 of the CEQ regulations; the correct address is listed therein).

2. U.S. EPA Headquarters or Regional Office responsible for EPA's review pursuant to Section 309 of the Clean Air Act: Five copies of the draft EIS and five copies of the final EIS.

3. U.S. Department of the Interior (DOI) Headquarters:

a. All States in FHWA Regions 1, 3, 4, and 5 plus Hawaii, Guam, Samoa, Arkansas, Iowa, Louisiana, Missouri, and Puerto Rico: 12 copies of the draft EIS and seven copies of the final EIS.

b. Kansas, Nebraska, North Dakota, Oklahoma, South Dakota and Texas: 13 copies of the draft EIS and eight copies of the final EIS.

c. New Mexico and all States in FHWA Regions 8, 9, and 10 *except* Hawaii, North Dakota, and South Dakota—14 copies of the draft EIS and nine copies of the final EIS.

Section 4(f) Evaluations

If the Section 4(f) evaluation is included in an EIS, DOI Headquarters should receive the number of copies listed above for EIS's. If the Section 4(f) evaluation is processed as a separate document or as part of an EA, the DOI should receive seven copies of the draft evaluation for coordination and seven copies of the final evaluation for information.

In addition, draft Section 4(f) evaluations, whether in a draft EIS, an EA or a separate document, are required to be coordinated where appropriate with the appropriate offices of the Department of Housing and Urban Development and the Department of Agriculture.

If the Section 4(f) evaluation is processed with a categorial exclusion or an EA, copies do not have to be forwarded to the FHWA Washington Headquarters.

Record of Decision Format and Content

[Proposed Appendix F of FHPM 7-7-2]

The record of decision must include the information required by § 1505.2 of the CEQ regulations. The following format and discussions are recommended for presentation of that information:

1. *Decision.* Identify the selected alternative. Reference to the final EIs may be used to reduce detail and repetition.

2. *Alternatives Considered.* This information can be most clearly organized by briefly describing each alternative (with reference to the final EIS, as above), then explaining and discussing the balancing of values underlying the decision. In addition, this discussion must include identification of the alternative or alternatives which were considered preferable from a strictly environmental point of view and, if use of Section 4(f) land is involved, the required Section 4(f) determination (see Appendix H).

For each individual decision (final EIS), the values (economic, environmental, safety, traffic service, community planning, etc.) which are significantly implicated will be different and will be given different levels of relative importance. Accordingly, it is essential that this discussion clearly identify each significant value and the reasons why some values were considered more important than others. While any decision represents a judgement on the part of the decisionmaker, that judgment should reflect a balancing of values in the best overall public interest.

It is also essential that legislative and policy requirements in Title 23, U.S.C., be given appropriate weight in this decision making process. The mission of FHWA is implementation of the Federal-aid highway program to provide safe and efficient transportation. While this mission must be accomplished within the context of all other Federal requirements, the beneficial impacts of transportation improvements must be given proper consideration and documentation in this record of decision.

3. *Measures to Minimize Harm.* Describe all measures to minimize environmental harm which have been adopted for the proposed action. Also include a specific statement that all practicable measures to minimize environmental harm have been incorporated into the decision.

4. *Monitoring or Enforcement Program.* Include a description of any monitoring or enforcement program which had been adopted for specific mitgation measures, as outlined in the final EIS.

Section 4(f) Evaluations Format and Content

[Proposed Appendix G of FHPM 7-7-2]

Draft Evaluation

A draft Section 4(f) evaluation must be included in a separate section of the draft EIS, EA, or for projects processed as categorical exclusions, in a separate document. When more than one alternative is under consideration, a draft Section 4(f) evaluation must be prepared and circulated which discusses each alternative requiring the use of Section 4(f) land.

The following information should be included in the draft Section 4(f) evaluation:

1. A brief description of the project and the need for the project (when the draft Section 4(f) evaluation is circulated separately for categorical exclusions and those special cases listed in 23 CFR 771.223(k)).

2. A detailed map or drawing of sufficient scale to discern the essential elements of the highway/Section 4(f) land involvement.

3. Size (acres or square feet) and location (maps or other exhibits such as photographs, slides, sketches, etc.).

4. Type (recreation, historic, etc.).

5. Available recreational activities (fishing, swimming, golf, etc.).

6. Facilities existing and planned (description and location of ball diamonds, tennis courts, etc.).

7. Usage (approximate number of users for each activity).

8. Relationship to other similarly used lands in the vicinity.

9. Access (both pedestrian and vehicular).

10. Ownership (city, county, State, etc.).

11. Applicable clauses affecting title, such as covenants, restrictions, or conditions, including forfeiture.

12. Unusual characteristics of the Section 4(f) land (flooding problems, terrain conditions, or other features that either reduce or enhance the value of portions of the area).

13. The location and amount of land (acres or square feet) to be used by the highway, including permanent and temporary easements.

14. The facilities and access affected.

15. The probable increase or decrease in physical effects on the Section 4(f) land users (noise, air pollution, etc.).

16. A description of all reasonable and practicable measures which are available to minimize the impacts of the proposed action on the Section 4(f) property.

17. Sufficient information to evaluate all alternatives which would avoid the Section 4(f) property. Discussions of alternatives in the draft EIS or EA may be referenced rather than repeated. However, this section should include discussions of design alternatives (to avoid Section 4(f) use) in the immediate area of the Section 4(f) property or discussions of why there are no such (local) alternatives which are considered reasonable. The determination that there are no feasible and prudent alternatives should not be addressed at the draft evaluation stage because the results of the formal coordination are not yet available.

18. The results of preliminary coordination with the public official having jurisdiction over the Section 4(f) property and with regional (or local) offices of DOI and the appropriate offices of DOA and HUD.

Final Evaluation

When the selected alternative involves the use of Section 4(f) land a final Section 4(f) evaluation must be included in the final EIS, EA, or for projects processed as categorical exclusions, in a separate final Section 4(f) evaluation. The final evaluation must contain:

1. All information required above for a draft evaluation.

2. A discussion of the basis for the determination that there are no feasible and prudent alternatives to the use of the Section 4(f) land.

3. A discussion of the basis for the determination that the proposed action includes all possible planning to minimize harm.

4. A summary of the appropriate formal coordination with the headquarters offices of DOI, DOA, and HUD.

Section 4(f) Determination Format and Content

[Proposed Appendix H of FHPM 7-721]

A Section 4(f) determination is the written administrative record which documents the determination required by 23 U.S.C. 138 and 23 CFR 771.223(a). The Section 4(f) determination will be incorporated into the record of decision for those actions which are processed with EIS's. For all other actions, any required Section 4(f) determination will be prepared as a separate document. The determination will be made in accordance with the delegation of authority in the FHWA Organizational Manual, FHWA Order 1-1.[1] A Section 4(f) determination should include the following:

1. Summarized discussions of the following with reference to detailed discussions in the final EIS or FONSI, if appropriate:

a. Project description and need,

b. Description of the Section 4(f) property, and

c. Alternatives to the proposed action which are considered.

2. Specific reasons why each alternative was determined not to be feasible and/or prudent.

[1] FHWA Orders are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

3. A list of measures which are proposed to minimize and/or mitigate impacts of the proposed action on the Section 4(f) property.

4. A summary of the results of the Section 4(f) coordination with the responsible official, DOI, DOA, and HUD

5. Specific summary statements, based upon the above considerations that:

a. there is no feasible and prudent alternative to the use of the Section 4(f) property, and

b. all possible planning to minimize harm has been accomplished.

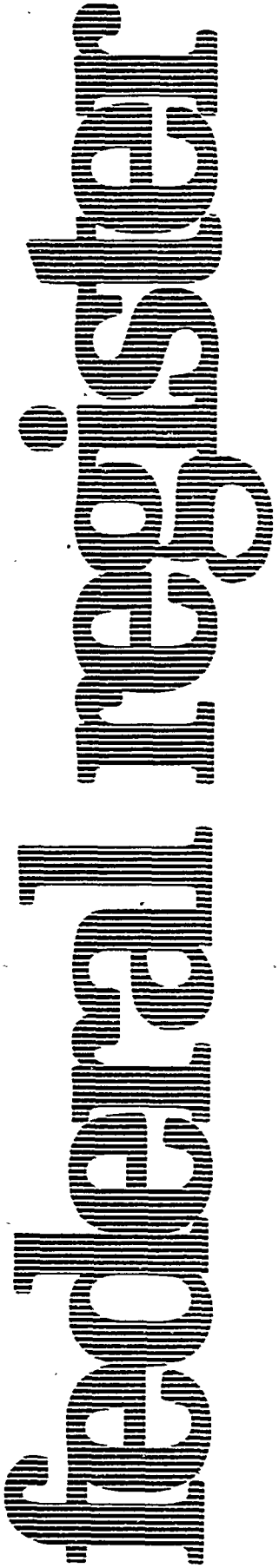
Issued on: October 10, 1979.

Karl S. Bowers,

Federal Highway Administrator.

[FR Doc. 79-31765 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-22-M



Monday
October 15, 1979

Part VI

Federal Reserve System

Electronic Fund Transfers

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0221]

Electronic Fund Transfers; Definitions, Exemptions, Special Requirements, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, Initial Disclosure of Terms and Conditions, Change in Terms; Error Resolution Notice, Preauthorized Transfers, Relation to State Law, Administrative Enforcement, Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form (1) additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980, and (2) amendments to existing sections of Regulation E. The regulatory proposal was published for comment at 44 FR 25850 (May 3, 1979). The Board is separately republishing today, for further comment, additional sections of the regulation to implement other provisions of the Act effective May 1980. Finally, the Board is issuing an analysis of the economic impact of the portions of the regulation adopted in final form.

EFFECTIVE DATES: Sections 205.3 and 205.6 (originally 205.5): November 15, 1979; §§ 205.2, 205.4 (a), (c), and (d), 205.5 (originally 205.4), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12, 205.13, and Appendix A: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202–452–2761), or Lynne B. Barr, Senior Attorney (202–452–2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist (202–452–2584), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The Board is adopting in final form additional sections of Regulation E to implement provisions of the Electronic Fund Transfer Act that become effective May 10, 1980. The sections adopted today are §§ 205.4 (a), (c), and (d), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12 and 205.13. The Board is also issuing additional model disclosure clauses (Appendix A to the regulation). These additional sections and model clauses were published on May 3, 1979, in the Federal Register for public comment (44 FR 25850). Note that the section numbers as adopted differ from those in the proposal.

The Board is also adopting amendments to §§ 205.2 and 205.3. Sections 205.4 and 205.5 in the existing regulation are being redesignated as §§ 205.5 and 205.6, respectively, and technical amendments to these sections are being adopted.

Other sections of the regulation proposed in May are being republished separately today for further public comment. See the proposed rules document affecting Regulation E in this issue.

The Board proposed in May not to implement in the regulation §§ 910 and 912–914 of the Act. Although some commenters suggested that the Board issue regulations on these sections, the Board has decided not to do so. With respect to §§ 912 through 914, the Board continues to feel that they are straightforward and regulatory implementation is not needed. Implementation of § 910 presents a different problem. That section imposes upon a financial institution liability for failure to make or stop electronic fund transfers in accordance with the terms and conditions of an account, except in certain enumerated instances. The Board is authorized to add to the list of instances in which an institution is absolved from liability. The Board is concerned that adding to this "laundry list" might reduce consumer protections and unduly complicate the regulation. Since § 910 explicitly states that a financial institution is liable only when it fails to act in accordance with the terms and conditions of its agreement with its customer, institutions may wish to review their customer agreements.

The Board solicited comment on whether the requirements of the Act and regulation should be modified, as permitted by § 904(c) of the Act, for small financial institutions, as necessary to alleviate undue compliance burdens for such institutions. The Board has determined that such modifications are not necessary at this time.

The Board received 202 written comments on the proposed amendments. Public hearings were also held on the proposal on June 18 and 19, 1979.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff met with staff members from the enforcement agencies both before and after the proposal was issued.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4–2). The Board of Governors has been advised by the Bank Board that § 545.4–2 will be amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the economic impact of the provisions adopted today is published in section (3) below. The final regulatory amendments and the economic impact statement have been transmitted to Congress.

Section 917 of the Act and § 205.13 of the regulation, which assign administrative enforcement to various federal agencies, do not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to state member banks under the general enforcement authority contained in § 1818(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b) (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) *Regulatory Provisions. Section 205.2—Definitions.* The definition of "error" has been deleted from § 205.2 and placed in § 205.11 (Procedures for Resolving Errors), thus bringing together in one section the provisions relating to error resolution.

The Board has decided to amend the definition of "unauthorized electronic fund transfer" so that the third exclusion reads: "or (3) that is initiated by the financial institution or its employee." This language is closer than that of the proposal to the statutory language in that it refers specifically to acts of the financial institution. The intent of the proposed amendment was to eliminate

the apparent inconsistency created by the fact that the existing definition of "unauthorized electronic fund transfer" excluded errors, yet "error" includes unauthorized transfers. The amendment as adopted also resolves this problem, by dropping the reference to errors.

The definition of "preauthorized electronic fund transfer" and the amendment to the existing definition of "financial institution" are adopted as proposed.

Section 205.3—Exemptions. The Board proposed to amend §§ 205.3 (c) and (d) which were adopted on March 21, 1979. Section 205.3(c) exempts transfers made primarily for the purchase or sale of securities or commodities. The Board proposed to eliminate the words "through a broker/dealer registered with" in order to broaden the scope of the exemption to include securities transactions made by mutual funds. A significant percentage of mutual fund transactions are accomplished through sources other than registered broker/dealers. The Board has adopted the exemption as proposed because it believes that existing federal laws and the regulations of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provide protection to consumers regarding payment transfers consistent with the requirements of the Act and Regulation E. Under the provision as amended, if payment is the primary purpose of the transfer and a securities purchase or sale only an incidental purpose, the regulation would apply.

The Board also solicited comment on whether pension and profit-sharing plans should be covered by this exemption. No comments were received on this issue. Since pension and profit-sharing plans are not regulated by the SEC or the CFTC, the Board does not believe an exemption is appropriate.

The Board proposed to revise § 205.3(d) in order to exempt:

1. Transfers between a consumer's accounts at a single financial institution, such as transfers from a demand deposit account to a savings account.

2. Transfers from the financial institution to the consumer's account, such as crediting of interest on savings accounts.

3. Transfers from the consumer's account to the financial institution, such as debiting of automatic mortgage payments, other loan payments, and checking account charges.

Comment was solicited as to whether transfers from the consumer's account to the financial institution should receive total or partial exemption.

The Board has decided to adopt § 205.3(d) as proposed with the change discussed below. Public comment supports the Board's belief that intra-institutional transfer services have been provided by financial institutions for many years. The focus of the Act is on new and developing electronic payment systems, not on traditional intra-institutional transfers that have become "electronic fund transfers" by computerization. In addition, these services are beneficial for consumers and institutions. The costs of providing them would increase if they were subject to the Act's requirements, particularly the monthly periodic statement requirement.

The Board has decided against making transfers from the consumer's account to the financial institution subject to the requirement of periodic statements. It believes that the periodic statements which financial institutions provide supply sufficient and timely information to consumers, and that the possibility of unauthorized use is not great for intra-institutional transfers. Comments did not demonstrate that the Act's protections were needed and the Board believes that the cost of these protections would outweigh the potential benefits.

Commenters pointed out, however, that complete exemption of the transfers described in paragraphs (2) and (3) of § 205.3(d) would conflict with § 913 of the Act. That section prohibits conditioning the granting of credit or the receipt of employment or government benefits on participating in a preauthorized electronic fund transfer arrangement. Accordingly, subsection (d)(2), exempting transfers into a consumer's account(s) by a financial institution, has been modified to require compliance with § 913(2) of the Act, and subsection (d)(3), exempting transfers from a consumer's account(s) to the financial institution, has been changed to require compliance with § 913(1) of the Act. Violations of § 913 will be enforced under §§ 915 and 916.

The Board also solicited comment as to whether any other automatic transfers should be exempted from the regulation. Several commenters suggested that additional exemptions should be made but did not provide a rationale for their recommendations. The Board does not believe that additional exemptions are warranted.

Section 205.4—Special Requirements. Section 205.4 corresponds to § 205.13 in the first proposal. The first sentence of § 205.4(a) permits two or more financial institutions that jointly provide electronic fund transfer services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. The second sentence is new. It states that when making disclosures under §§ 205.7 and 205.8, a financial institution providing electronic fund transfer services under an agreement with other financial institutions need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account. This provision responds to a problem raised by commenters, namely, that a financial institution that is part of a shared system is unable to disclose the terms and conditions imposed by other participants in the system.

Section 205.4(b) is being proposed for comment. Sections 205.4 (c) and (d) correspond to §§ 205.13 (b) and (c) in the first proposal. Only technical changes have been made in these sections. Commenters asked whether financial institutions may choose to which joint account holder they will send disclosures or statements; § 205.4(c)(2) does not restrict the institution's choice.

Section 205.4(d) permits financial institutions to provide additional information or disclosures required by other laws (Truth in Lending disclosures or state law disclosures) with the disclosures required by Regulation E. Commenters asked that a specific provision permitting inconsistent state laws to be combined with the Regulation E disclosures (similar to § 226.6(b) of Regulation Z) be added to the regulation. The Board does not believe that such a provision is necessary at this time, given the stringent placement requirements in Regulation Z. Other commenters asked that the Board add a provision similar to one contained in Regulation Z requiring that additional information or other disclosures combined with the required disclosures not mislead or confuse the consumer or detract attention from the disclosures required by Regulation E. The Board is reluctant to add such a provision because of difficulty in enforcing it. It could also conflict with the similar provision in Regulation Z, particularly because Truth in Lending disclosures and EFT disclosures will often be combined by the financial institution into a single disclosure statement.

Section 205.5—Issuance of Access Devices. Section 205.4 has been redesignated § 205.5. The existing regulation provides that an access device that is sent unsolicited to the

consumer must be accompanied by a disclosure that complies with § 205.4(d). However, § 205.4(d) is a transitional provision and is effective only until May 10, 1980. For this reason, the Board is amending, effective May 10, 1980, § 205.4(b)(2) to read, "... in accordance with § 205.7(a), ...," and deleting § 205.4(d).

Section 205.6—Liability of Consumer for Unauthorized Transfers. Section 205.5 has been redesignated § 205.6. The Board is adopting a technical amendment to paragraph (a)(3)(i), to make clear that the information required to be disclosed is identical to that required by § 205.7(a)(1).

The Board has decided to adopt the proposed amendment to paragraph (b); the phrase "series of transfers arising from a single loss or theft of the access device" is changed to "series of related unauthorized transfers." This revision recognizes that unauthorized transfers may occur in circumstances other than those involving loss or theft of an access device.

A few commenters found the term "related transfers" to be ambiguous. Whether several unauthorized transfers are related is a question of fact; typically transfers arising from a single loss or theft of the access device will be related.

In addition, the phrases "electronic fund" and "whichever is less," which were inadvertently omitted, have been inserted.

Section 205.7—Initial Disclosure of Terms and Conditions. Section 205.7 corresponds to § 205.6 in the proposal. Comment was solicited on whether disclosure should be permitted "before the first electronic fund transfer is made involving a consumer's account." A large number of responses were received, the majority supporting the proposal. The proposed language was considered particularly important where the consumer contracts with an employer (in the case of direct payroll deposit) or with a utility (in the case of preauthorized debits) for an EFT service rather than directly with the account-holding financial institution. The financial institution would be unable to provide disclosures at the time the consumer contracts for the service. For that reason, and because of the difficulty of determining when a consumer has contracted for an EFT service, the Board is adopting this provision as proposed.

Several commenters were concerned about the difficulty of providing disclosures before the first electronic fund transfer. It was pointed out that, through an oversight or other error, an institution may not receive prenotification of an electronic fund transfer, such as a payroll deposit, or may not receive prenotification far enough in advance to enable it to give the required disclosures before the transfer is made. The Board believes, however, that applicable Treasury Department regulations governing the federal recurring payments program and industry practices, such as the automated clearing house rules, will minimize the likelihood of such occurrences, and that no further extension of the deadline for making disclosures is necessary.

Section 205.7(a)(1) has been amended to make it clear that a complete description of the consumer's potential statutory liability for unauthorized transfers need not be recited on the initial disclosure statement. The Board believes that a summary description, in plain English, will be easier for consumers to understand, and also less cumbersome for financial institutions. Examples showing the amount of information the Board considers appropriate for compliance with §§ 205.7 (a)(6), (a)(7), and (a)(8), as well as this paragraph, are contained in the model disclosure clauses.

No changes have been made in §§ 205.7 (a)(2) and (a)(3).

The requirement of § 205.7(a)(4) that usage limitations on EFT devices be disclosed generated a great many comments. Three points were raised. A number of commenters were concerned that an account-holding institution would be unable to determine, and therefore disclose, limitations imposed by other financial institutions—especially in the context of an interchange network or an automated clearing house system. As provided in § 205.4(a), a financial institution need make only those disclosures that are within its knowledge and the purview of its relationship with the consumer.

The second issue raised in connection with this paragraph is the question of what types of limitations are exempt from the disclosure requirement as "necessary to maintain the security" of an EFT system. The Board believes that such a determination can only be made by financial institutions on a case-by-case basis. Section 205.7(a)(4), however, does not permit institutions to withhold the details of frequency and amount limitations merely because they are related to the security aspects of the system. Unless disclosure of such details would compromise the integrity of the system, consumers must be informed of them. In order to emphasize the narrow scope of this exemption, the Board has amended the second sentence of the paragraph, changing the word "necessary" to "essential." It should be noted, however, that even when disclosure of such limitations would jeopardize a system's security, the financial institution is only relieved of the duty to disclose the details of the limitations; the fact that certain limitations exist must still be disclosed to the consumer.

The third issue raised by the commenters was whether the deletion of the words "and nature" in the regulation from the statutory phrase "type and nature of electronic fund transfers" was intended as a substantive departure from the requirements of the Act. The reason for the deletion is simply that the Board considers the additional words unnecessary.

No change has been made in section 205.7(a)(5). A number of commenters requested clarification as to what types of charges must be disclosed under this paragraph. It is the Board's opinion that only those charges that relate specifically to electronic fund transfers, such as transaction charges, or to the right to make such transfers, such as monthly EFT service charges, should be disclosed. In cases where an institution imposes only a general, undifferentiated account maintenance charge that covers EFT as well as other services, or requires that a minimum balance be maintained, no disclosure need be made under this paragraph.

Sections 205.7(a)(6), (a)(7), and (a)(8) have been amended to require only a summary statement of the consumer's statutory rights, as in the case of section 205.7(a)(1), discussed above. The model clauses that relate to these paragraphs indicate how much information an adequate summary would contain. In connection with section 205.7(a)(8), it should also be noted that the Board has decided not to implement section 910 of the Act in the regulation.

Section 205.7(a)(9) is substantially similar to the proposal. Several commenters expressed concern that the Board's original proposal was drafted too broadly, and would require financial institutions to disclose their reporting practices with respect to every consumer's account, including accounts not accessible to electronic fund transfers. However, this paragraph, and indeed all of section 205.7(a), relate only to accounts that are accessible by electronic fund transfers. Therefore, the institution's practices concerning other accounts need not be disclosed. It should be noted that this paragraph requires the institution to describe the conditions under which *any* information relating to an account will be made available to third parties in the ordinary course of business.

The Board received a large number of comments regarding section 205.7(a)(10), most of which proposed amendments or additions to the error resolution procedure notice. In response to these comments, the notice has been redrafted in the interest of making the error resolution procedure more readily understandable to consumers. No change in substance or basic format was made, however, and the notice remains a summary of the statutory error resolution procedures, in compliance with section 905(a)(7) of the Act.

Section 205.7(b) has been substantially amended, in light of the comments received. The proposal could have been interpreted to require a large number of account holders to be given the disclosures required by paragraph (a) even where no electronic fund transfers were made or contemplated prior to May 10, 1980, and even if the account was closed on that date. The Board does not believe that such a result would be beneficial to consumers, or that it is required by section 905(c) of the Act. Under section 205.7(b), as adopted, institutions must make the disclosures required by section 205.7(a) for all accounts still open on May 10, 1980, from or to which electronic fund transfers were actually made or contracted for prior to that date, or for which an access devise was issued to a consumer (whether or not the device was an "accepted access device," as defined in section 205.2(a)(2)).

A number of commenters were also concerned that financial institutions which do not normally issue monthly statements will be forced to make a special mailing in order to comply with the timing requirement of this paragraph. Accordingly, the regulation now provides that the disclosures may be made at any time "on or before" June 9, 1980. Thus, an institution could choose to make the necessary disclosures in a periodic statement scheduled for a date earlier than May 10, 1980, and still be in compliance.

Section 205.8—Change in Terms; Error Resolution Notice. Section 205.8 corresponds to section 205.7 in the proposed draft, and, with the exception of the deletion of paragraph (b)(2)(ii), it remains substantially the same. Paragraphs (a) (1) and (2) have been merged; similarly, paragraphs (b) (1) and (2) have been combined. Comment was solicited on whether additional types of unfavorable changes in terms or conditions of an account should be added to the list set forth in paragraph (a). Commenters did not generally favor additions to this provision and no change has been made.

Several commenters requested clarification of the relationship of paragraph (a)(2) of section 205.8 (limitations on the obligation to give prior notice of an adverse change in terms) to section 205.7(a)(4) (disclosure of frequency and amount limitations on the use of an access device). Concern was expressed that if a dollar or use limitation that was not previously disclosed for security reasons was made stricter, the institution would have to either explain the change, and thereby jeopardize the security of the system, or merely indicate that some unexplained change had been made to a previously undisclosed limitation. Neither choice would be in the best interest of the consumer or the institution, however, and neither result is contemplated. Section 205.8 does not require subsequent disclosures to be given in any case where a term not required to be disclosed under section 205.7(a) is changed. Where the details of a dollar or frequency limitation are withheld on security grounds under section 205.7(a)(4), a change in that limitation is not required to be disclosed later under section 205.8(a). If no such limitation existed when the section 205.7(a) disclosures were given, but one was subsequently added to a system or an account, the institution could withhold those details "essential to maintain the security of the system," but it would be required to indicate that some limitation had been imposed.

A number of comments were also received regarding the requirement that notice be given within 30 days after a change believed necessary to maintain or restore the security of a system or account. The Board recognizes the fact that the 30-day requirement would force institutions using a quarterly periodic statement schedule, as well as any institution forced to institute such a change immediately before its scheduled statements are to be sent out, to make a special mailing to comply with this paragraph. In order to avoid this result, the Board has amended this provision to permit disclosure of such changes either within 30 days or on the next regularly scheduled periodic statement.

No substantive changes were made in paragraph (b)(1). Paragraph (b)(2) has been amended by eliminating proposed paragraph (b)(2)(ii), which would have required institutions using the "short-form" error resolution notice to send the longer notice to consumers who assert errors. Commenters pointed out that in most cases the investigation and correction of the alleged error will have already been completed by the time the long notice arrives, or will be completed shortly thereafter, and that the notice would then come too late to be of any practical use to the consumer. Such a notice might also be confusing, since a consumer receiving it might feel obliged to notify the institution again.

Section 205.10—Preauthorized Transfers. Section 205.10(a) appears in the proposed rules document on Regulation E in this issue.

Sections 205.10 (b), (c), and (d) were previously designated sections 205.9 (a), (b), and (c) respectively. Under the proposal, the responsibility for providing a copy of an authorization for preauthorized transfers from an account lay with either the financial institution or the designated payee. Many financial institutions explained that frequently they do not participate in, or have knowledge of, the consumer's authorization of preauthorized transfers. Section 205.10(b) has been modified, as suggested by commenters, to specify that the obligation to provide the consumer with a copy of the authorization form rests with the party that actually obtains the authorization.

The Board has added a sentence to section 205.10(c) to explain the consequences of a consumer's failure to provide timely written confirmation of an oral stop-payment order. Such failure results in a lifting of the order and a release of the financial institution from any obligation to continue to refuse to pay an item. The rest of the section is substantially unchanged.

The Board has also changed the first sentence of section 205.10(d) to insure that notice will be provided when a preauthorized transfer varies from the previous transfer under the same authorization. The proposal would have required notice only when a transfer differed from a "preauthorized amount." Commenters pointed out that in many cases a consumer will not specify an amount when authorizing varying transfers.

Financial institutions argued that they are not in the best position to provide notice of varying transfers and asked that the regulation place this responsibility on the designated payee. The Board does not believe it appropriate to vary by regulation express language on this point in section 907(b). The Act does not prohibit financial institutions from contracting with the designated payee for compliance with the notice requirement and obtaining indemnity for non-compliance.

Section 205.12—Relation to State Law. The provisions relating to preemption of State law have been rearranged and rewritten. Proposed sections 205.11 (a) and (b) would have constituted a

regulatory determination of inconsistency since the provisions of State law described in proposed sections 205.11(b)(1)(i)–(iv) would have been automatically preempted. Comments on the proposal and further analysis of section 919 and its legislative history have led the Board to conclude that the question of preemption should be decided upon application. Consequently, paragraphs (1) through (4) of section 205.12(b) now set forth the standards that the Board will apply in determining inconsistency, rather than final determinations of inconsistency. The regulation provides that any State, financial institution, or other interested party may apply to the Board for a determination whether a State law is preempted.

The provisions relating to exemption of State-regulated transactions have not been changed.

Section 205.13—Administrative Enforcement. The proposal would have required financial institutions to retain records of compliance for two years. Many industry commenters urged the Board to shorten the record retention period to conform to the Act's one-year statute of limitations. Enforcement agencies, however, stressed the importance of records in carrying out their responsibilities under section 917 of the Act. For this reason, and to conform with record retention requirements under the Truth in Lending and Equal Credit Opportunity regulations, the Board has adopted a two-year record retention requirement.

Language has been added to section 205.13(c)(1) specifying acceptable methods for retaining records of compliance, and section 205.13(c)(2) has been changed to indicate that only the records actually involved in an ongoing lawsuit or administrative proceeding must be retained beyond the two-year period. Financial institutions should note that they need not retain multiple copies of identical disclosures.

(3) *Economic Impact Analysis. Introduction.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies sections of the regulation that are being issued in final form.[1]

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund transfer (EFT) services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. *It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or state law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.*

Analysis of Regulatory and Statutory Provisions. Section 205.3 is amended by the expansion of two exemptions. First, electronic fund transfers primarily for the purchase or sale of regulated securities are to be exempted from coverage by the regulation even if such transfers are not made through a registered broker/dealer, as is the case in many mutual fund transfers. This provision eliminates the costs of duplicating consumer protections already guaranteed by other federal laws.

Second, the regulation exempts preauthorized automatic transfers between a consumer's accounts at a financial institution and between the institution and a consumer's account. Subjecting such intra-institutional transfers to the Act's requirements would disrupt efficiently functioning internal transfer systems and increase their costs. The exemption assures that financial institutions may continue to offer to consumers such cost-saving, convenient services as automatic crediting of interest, automatic debiting of loan payments, and transfer of funds from checking to savings accounts.

Section 205.4 permits financial institutions to contract among themselves to avoid duplicate compliance efforts for jointly-offered services.[2] It also provides that an institution need issue only one set of disclosures per consumer and per joint account, and that disclosures required by other laws may be combined with disclosures required by this regulation.

These measures reduce the amount of disclosures and mailings needed to comply with the Act, while obviating the duplication of some services. Some compliance costs can therefore be avoided through this provision of the regulation. A financial institution is specifically exempted from having to make disclosures that go beyond its knowledge and the purview of its relationship with consumer account holders. This regulatory provision relieves institutions of the need to list such details as business days and telephone numbers for all institutions in a shared EFT system.

Section 205.7 modifies the Act's requirement that initial disclosures must be made at the time a consumer contracts with a financial institution for EFT services. The regulation provides that institutions can comply by giving the initial disclosures before the first electronic transfer occurs. This provision assures that consumers receive timely disclosures while, at the same time, it obviates the need to determine under state law when a contract for such services is created.

The initial disclosures will benefit consumers by providing them with more information than otherwise may have been readily available. With the disclosures consumers will be better able to assess the risks and benefits associated with EFT, to plan their financial transactions, and to compare EFT services offered by different institutions. By fostering greater awareness of the risks of liability associated with EFT use, the disclosures may encourage consumers to exercise greater care in the use of access devices. The required listing of offered services may have some marketing effect, leading to greater use of EFT services and, to the extent that scale economies are possible, may lower average cost of fund transfers. Finally, the disclosures benefit consumers by describing the steps they must take to guarantee the investigation and resolution of errors; proper use of the error resolution procedure will lead to greater recovery of consumer losses from errors.

Financial institutions will benefit from their mandatory disclosures to the extent that consumer understanding of the terms and conditions leads to more widespread and careful use of EFT services. Consumers will know the correct channels through which to notify an institution of loss, theft, or suspected error. The Act and regulation do not preclude financial institutions from

[1] The analysis presented here is to be read in conjunction with the economic impact analysis that accompanies the Board's final rules at 44 FR 18474, (March 28, 1979). The sections of the regulation have been redesignated.

[2] Section 205.4(b) has been issued in proposed form for comment and is not considered here.

realizing cost savings by routinizing notification procedures and by establishing shared or centralized reporting channels.

Several costs will be imposed on financial institutions by the initial disclosure requirement. Institutions will incur drafting, legal, printing, distribution, and administrative costs in complying with disclosure requirements of the Act. Although the regulation sets forth a mandatory notice of error resolution procedures and provides model disclosure clauses for several subsections, disclosure documents must be drafted by the institution to reflect its unique terms and conditions. Four institutional commenters estimated initial disclosure costs; their estimates averaged $0.34 per disclosure. Actual aggregate costs will depend on the use of special provisions of section 205.4 and on the degree to which institutions avoid postage costs by sending disclosures in already-scheduled mailings.

It is expected that adoption at this time of the disclosure requirements in final form will allow an adequate period for most institutions to draft and print disclosure statements for distribution by the June 9, 1980, absolute deadline.[3] The many institutions with a quarterly statement period ending June 30, 1980, will be unable to use July 1980 statement mailings for initial disclosures. The Act's deadline will therefore force those institutions to include disclosures in April statement mailings. The additional costs of meeting this operational compliance deadline are not likely to be great, however.

The initial disclosure requirements may place small financial institutions at a competitive disadvantage relative to larger institutions because the latter are able to spread fixed legal, administrative, and other costs over larger account bases. However, third-party vendors of EFT service packages to financial institutions may incur lower average costs by pooling orders, so that small institutions might enjoy some scale economies. The net effect of the initial disclosure requirements by size of institution cannot be assessed in advance.

Initial disclosure requirements are unlikely to have significant effects on the availability of EFT services to low-income consumers. Availability by income class is mainly dependent on the Act's issuance and liability provisions, which are implemented by sections 205.5 and 205.6 of the regulation.

Section 205.8 of the regulation repeats the Act's requirements that financial institutions make (1) subsequent disclosures of the error resolution procedures at least once each year and (2) prompt disclosure of any change in terms or conditions that restricts services or increases costs for consumers. Like the initial disclosures, the subsequent disclosures will benefit both consumers and financial institutions by making relevant payment system information more readily available to consumers. Institutions will incur the costs of disclosure statement drafting, printing, and distribution. Distribution costs can be reduced by sending disclosures with periodic statements.

The Act requires that financial institutions disclose certain changes in the terms or conditions of an EFT account; this requirement is reflected in section 205.8(a) of the regulation. Such changes might be motivated by marketing or security considerations or changes in the costs of maintaining accounts. In particular, an institution must disclose any increase in a fee or charge for electronic transfers. Because cost inflation can be expected to drive up nominal account maintenance charges and trigger additional disclosures, this provision of the Act will place on institutions and consumers a regulatory cost burden associated with increases in the general price level. This disclosure rule thus places a regulatory "tax" on certain market price adjustments.

Regarding the error resolution procedure notice of section 205.8(b), the regulation permits institutions to choose either to send the full error resolution procedure disclosure once every year or to send an abridged disclosure with every periodic statement. Disclosure cost could be minimized by printing the abridged notice on the periodic statement forms. The alternatives allow institutions some flexibility to choose the most economically efficient compliance method for each account. Consumers benefit from adequate disclosure in either case.

Sections 205.10 (b), (c), and (d) establish rules regarding preauthorized transfers from a consumer's account. The regulation, like the Act, requires that preauthorized debits may be made only if the consumer has authorized them in writing and received a copy of the agreement. As a result of this provision, consumers are likely to be better informed about their payment schedules. Institutions face a compliance cost only if they obtain the authorization, and such costs may be passed on to the payee. The regulation reiterates the Act's provision that consumers may stop payment of a preauthorized debit up to 3 business days before it is scheduled to occur. This measure provides benefits by ensuring a degree of protection and flexibility for the consumer, while allowing institutions sufficient time to accomplish stop-payment orders. Finally, the regulation restates the Act's requirement that advance notice must be given to a consumer whenever a preauthorized payment differs in amount from the previous transfer to the same payee. The regulation allows, however, that an institution may, if it informs a consumer of this right to notice, offer the consumer a plan whereby notice is sent only if the transfer goes beyond amount limits that the consumer may set. In this way the regulation allows for the reduction of notice volume and related costs.

Sections 205.12 and 205.13 reflect statutory provisions for administrative enforcement and for the relationship to state laws affecting EFT. The regulation requires that records containing evidence of compliance must be kept by financial institutions for at least two years. One commenter estimated that yearly record retention costs would average $0.89 per file in 1980, implying a nationwide annual cost of $19 million in 1980.[4] Record retention activity is, however, partially motivated by other regulations and business considerations, so that costs due solely to the Act and regulation cannot be determined.

Uncertainty about whether state laws are consistent with provisions of the Act and regulation will lead financial institutions to seek determinations from the Board under section 205.12. Preparation of the required applications will impose costs on applicants and may deter some institutions from applying. Uncertainties about the relationship between state and federal law may result in a temporary restriction of the availability of EFT services to some classes of consumers.

(4) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board hereby amends Regulation E, 12 CFR Part 205, as follows:

1. Section 205.2 is amended, effective May 10, 1980, by deleting the last sentence of paragraph (i), by redesignating paragraph (j) as (k), by adding new paragraph (j), by redesignating paragraph (k) as (l), and

[3] For accounts in existence on May 10, 1980. The regulation is expected to reduce compliance costs substantially by exempting closed accounts that otherwise would be subject to the Act's disclosure requirements.

[4] This assumes that files are kept for each of 22 million consumer EFT accounts.

by revising new § 205.2(l)(3) to read as follows:

§ 205.2 Definitions.

* * * * *

(j) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(k) "State" * * *

(l) "Unauthorized electronic fund transfer" * * * (3) that is initiated by the financial institution or its employee.

2. Section 205.3 is amended, effective November 15, 1979, by revising the introductory statement and paragraphs (c) and (d), to read as follows:

§ 205.3 Exemptions.

The Act and this regulation do not apply to the following:

* * * * *

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Certain automatic transfers.* Any transfer under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer.

(1) Between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account;

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account (except that the financial institution is subject to §§ 913(2), 915, and 916 of the Act); or

(3) From a consumer's account to an account of the financial institution, such as a loan payment (except that the financial institution is subject to §§ 913(1), 915, and 916 of the Act).

* * * * *

3. Section 205.4 is redesignated as § 205.5, and a new § 205.4 is added, effective May 10, 1980, to read as follows:

§ 205.4 Special Requirements.

(a) *Services offered by two or more financial institutions.* Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. When making disclosures under §§ 205.7 and 205.8, a financial institution that provides electronic fund transfer services under an agreement with other financial institutions need make only those disclosures which are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

(b) [Reserved] [5]

(c) *Multiple accounts and account holders.* (1) If a consumer holds two or more accounts at a financial institution, the institution may combine the disclosures required by the regulation into one statement (for example, the financial institution may mail or deliver a single periodic statement or annual error resolution notice to a consumer for multiple accounts held by that consumer at that institution).

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

(d) *Additional information; disclosures required by other laws.* At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be combined with the disclosures required by this regulation.

4. New § 205.5 is amended, effective May 10, 1980, by revising paragraph (b)(2) and by deleting paragraph (d), to read as follows:

§ 205.5 Issuance of Access Devices.

* * * * *

(b) *Exception.* * * *

(1) * * *

(2) The distribution is accompanied by a complete disclosure, in accordance with § 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

* * * * *

5. Former § 205.5 is redesignated as § 205.6 and is amended, effective November 15, 1979, by revising paragraphs (a)(3)(i) and (b), to read as follows:

§ 205.6 Liability of Consumer for Unauthorized transfers.

(a) *General rule.* * * *

(3) * * *

(i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

* * * * *

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall not exceed $50 or the amount of unauthorized transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

* * * * *

6. Sections 205.7, 205.8, 205.10 (b), (c), and (d), 205.12, and 205.13 are added, effective May 10, 1980, to read as follows:

§ 205.7 Initial Disclosure of Terms and Conditions.

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the

[5] See FR Doc. 79-31770 published elsewhere in this Part for the text of proposed § 205.4(b).

procedure for initiating a stop-payment order, as provided in § 205.10(c).

(8) A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under § 910 of the Act.

(9) The circumstances under which the financial institution in the ordinary course of business will disclose information to third parties concerning the consumer's account.

(10) A notice that is substantially similar to the following notice concerning error resolution procedures and the consumer's rights under them:

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert phone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will recredit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not recredit your account.

If we decide that there was no error, we will send you a written explanation within 3 business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) *Timing of disclosures for accounts in existence on May 10, 1980.* A financial institution shall mail or deliver to the consumer the information required by paragraph (a) of this section on or before June 9, 1980, or with the first periodic statement required by § 205.9(b) after May 10, 1980, whichever is earlier, for any account that is open on May 10, and

(1) From or to which electronic fund transfers were made prior to May 10, 1980;

(2) With respect to which a contract for such transfers was entered into between a consumer and a financial institution; or

(3) For which an access device was issued to a consumer.

§ 205.8 Change in terms; error resolution notice.

(a) *Change in terms.* A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(a) if the change would result in increased fees or charges, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amounts of transfers. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or account. However, if a change required to be disclosed under this paragraph is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

(b) *Error resolution notice.* For each account from or to which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the notice set forth in § 205.7(a)(10). Alternatively, a financial institution may mail or deliver a notice that is substantially similar to the following notice on or with each periodic statement required by § 205.9(b):

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

§ 205.9 [Reserved] [6]

§ 205.10 Preauthorized transfers.

(a) [Reserved] [7]

(b) *Preauthorized transfers from a consumer's account; written authorization.* Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

(c) *Consumer's right to stop payment.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) *Notice of transfers varying in amount.* Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. If the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers, the consumer may elect to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

§ 205.11 [Reserved] [8]

§ 205.12 Relation to state law.

(a) *Premption of inconsistent state laws.* The Board shall determine, upon the request of any state, financial institution, or other interested party,

[6] [7] [8] See FR Doc. 79-31770 published elsewhere in this Part for the text of proposed §§ 205.9, 205.10 (a) and 205.11.

whether the Act and this regulation preempt state laws relating to electronic fund transfers. Only those state laws that are inconsistent with the Act and this regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the Act and this regulation if it is more protective of a consumer.

(b) *Standards for preemption.* The following are examples of the standards the Board will apply in determining whether a state law, or a provision of that law, is inconsistent with the Act and this regulation. Inconsistency may exist when state law:

(1) Requires or permits a practice or act prohibited by the Act or this regulation;

(2) Provides for consumer liability for unauthorized electronic fund transfers which exceeds that imposed by the Act and this regulation;

(3) Provides for longer time periods than the Act and this regulation for investigation and correction of errors alleged by a consumer, or fails to provide for the recrediting of the consumer's account during the institution's investigation of errors as set forth in § 205.11(c); or

(4) Provides for initial disclosures, periodic statements, or receipts that are different in content from that required by the Act and this regulation except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the Act or this regulation.

(c) *Procedures for preemption.* Any request for a determination shall include the following:

(1) A copy of the full text of the state law in question, including any regulatory implementation or judicial interpretation of that law;

(2) A comparison of the provisions of state law with the corresponding provisions in the Act and this regulation, together with a discussion of reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the Act and this regulation; and

(3) A comparison of the civil and criminal liability for violation of state law with the provisions of sections 915 and 916(a) of the Act.

(d) *Exemption for state-regulated transfers.* (1) Any state may apply to the Board for an exemption from the requirements of the Act and the corresponding provisions of this regulation for any class of electronic fund transfers within the state. The Board will grant such an exemption if the Board determines that:

(i) Under the law of the state that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Act and the corresponding provisions of this regulation, and

(ii) There is adequate provision for state enforcement.

(2) To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the Act; and

(ii) After an exemption has been granted, for the purposes of section 915 of the Act, the requirements of the applicable state law shall constitute the requirements of the Act and this regulation, except to the extent the state law imposes requirements not imposed by the Act or this regulation.

§ 205.13 Administrative enforcement.

(a) *Enforcement by federal agencies.* (1) Administrative enforcement of the Act and this regulation for certain financial institutions is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration Board, Civil Aeronautics Board, and Securities and Exchange Commission.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Issuance of staff interpretations.* (1) Unofficial staff interpretations are issued at the staff's discretion where the protection of section 915(d) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations are issued at the discretion of designated officials. No interpretations will be issued approving financial institutions' forms or statements. Any request for an official staff interpretation of this regulation shall be made in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the transfer or service, and shall include copies of all pertinent documents.

(ii) Within 5 business days of receipt of a request, an acknowledgment will be sent to the person making the request. If the designated officials deem issuance of an official staff interpretation to be appropriate, the interpretation will be published in the Federal Register to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the Federal Register and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the Federal Register.

(3) Any request for public comment on an official staff interpretation of this regulation shall be made in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. It must be postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the Federal Register. The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 915(d) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation.

(c) *Record retention.* (1) Evidence of compliance with the requirements imposed by the Act and this regulation shall be preserved by any person subject to the Act and this regulation for a period of not less than 2 years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) Any person subject to the Act and this regulation that has actual notice that it is being investigated or is subject to an enforcement proceeding by an agency charged with monitoring that person's compliance with the Act and this regulation, or that has been served with notice of an action filed under sections 915 or 916(a) of the Act, shall retain the information required in paragraph (c)(1) of this section that pertains to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

7. Appendix A is amended, effective May 10, 1980, by revising the introductory statement and by adding sections A(8)(a), (c), and (d), (9), and (10), to read as follows:

Appendix A—Model Disclosure Clauses

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(a)(3), (b)(2), and (b)(3), 205.6(a)(3), and 205.7. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under sections 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and should not be used as such. Financial institutions may make alterations, substitutions, or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits in section A(2)). Sections A(3) and A(9) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address need not be repeated if referenced.

* * * * *

Section A(8)—Disclosure of Right to Receive Documentation of Transfers (Sections 205.5(b)(2), 205.7(a)(6))

(a) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our (automated teller machines) (or) (point-of-sale terminals).

(b) [Reserved][9]

(c) *Periodic statements.* You will get a (monthly) (quarterly) account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(d) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

Section A(9)—Disclosure of Right To Stop Payment of Preauthorized Transfers, Procedure for Doing So, Right To Receive Notice of Varying Amounts, and Financial Institution's Liability for Failure To Stop Payment (Sections 205.5(b)(2), 205.7(a)(6), (7), and (8))

(a) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at (insert telephone number), or write us at (insert address), in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you (insert amount) for each stop-payment order you give.)

(b) *Notice of varying amounts.* If these regular payments may vary in amount, (we) (the person you are going to pay) will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Section A(10)—Disclosure of Financial Institution's Liability for Failure To Make Transfers (Sections 205.5(b)(2), 205.7(a)(8))

(a) *Liability for failure to make transfers.* If we do not properly complete a transfer to or from your account according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, your account does not contain enough money to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the (terminal) (system) was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer.
- There may be other exceptions.

By order of the Board of Governors, October 5, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-31769 Filed 10-12-79; 8:45 am]

BILLING CODE 6210-01-M

[9] See FR Doc. 79-31770, published elsewhere in this Part, for the text of proposed section A(8)(b) of the Appendix A.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0251]

Electronic Fund Transfers; Special Requirements, Documentation of Transfers, Preauthorized Transfers, Procedures for Resolving Errors, Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is republishing for further comment certain proposed additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980. These sections were previously published for comment at 44 FR 25850 (May 3, 1979). The Board is also separately publishing in final form other sections of Regulation E to implement other provisions of the Act becoming effective in May 1980. The Board is publishing for further comment a revised economic impact analysis, as required by section 904 of the Act.

DATE: Comments must be received on or before November 15, 1979.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B2223, 20th and Constitution Avenue, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to docket number R-0251.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202-452-2761), or Lynne B. Barr, Senior Attorney (202-452-2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2584).

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The provisions of Regulation E currently in effect (44 FR 18468, March 28, 1979) implement sections 909 and 911 of the Electronic Fund Transfer Act (Title XX, Pub. L. 95-630), which took effect February 8, 1979. The remainder of the Act takes effect May 10, 1980; on May 3, 1979, the Board published for comment (44 FR 25850) additional sections of Regulation E to implement those portions of the Act. The Board also held public hearings on the proposal on June 18 and 19, 1979.

The Board received 202 written comments on the proposed additional sections. Based on the comments, the testimony at the public hearings, and its own analysis, the Board has revised certain of the proposed sections and is republishing them for further comment. Section 205.8 (Documentation of Transfers) and § 205.10 (Error Resolution Procedure) have been redesignated §§ 205.9 and 205.11, respectively. Proposed § 205.4(b) is a new provision. The Board is also republishing § 205.10(a) (preauthorized transfers to a consumer's account) and its corresponding model disclosure clause for comment. This provision was designated § 205.8(c) in the first proposal. These are discussed in detail in section (2) below.

Other sections are being published separately today in final form. See the final rules document affecting Regulation E in this issue.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff have met with staff members from the enforcement agencies both before and after the proposed additional sections were first issued.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. A preliminary economic impact statement was published with the proposed additional sections, and a revised statement (applicable to the sections republished for further comment) appears in section (3) below. The statement and the proposed regulation have been transmitted to Congress, as required by § 904(a)(4).

Section 904(c) permits the Board to modify the requirements of the Act as they affect small financial institutions if the Board determines that modifications are necessary to alleviate any undue compliance burden. Section 904(d) requires the Board to insure that the requirements of the Act are imposed upon all persons that offer electronic fund transfer services to consumers. The Board previously solicited comment on how the proposed regulation would affect small financial institutions and on the extent to which EFT services are offered by non-financial institutions. Any further comments on this issue are welcome.

Because the public has already had an opportunity to comment on the subject matter of this proposal, and because it is desirable to complete Regulation E in final form as much in advance of the May 1980 effective date as possible, the Board believes that an expedited rulemaking procedure is in the public interest. Accordingly, the expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), will not be followed in connection with this proceeding.

(2) *Regulatory Provisions. Section 205.4—Special Requirements.* Sections 205.4 (a), (c), and (d) were adopted today in final form. Section 205.4(b) had no counterpart in the first proposal. It addresses an issue which at the present time is probably quite rare, but which may in the future be more common. Specifically, the issue is how to apportion responsibility for compliance with the regulation where (a) one institution holds the consumer's account and a second institution provides an EFT service and (b) there is no agreement between the institutions as to the service.

A description of a program offered by a particular financial institution illustrates the type of program to which this provision would apply.

A financial institution ("Bank A") now issues EFT cards to consumers with whom it does not have an account relationship; the consumer's deposit account is held by another financial institution ("Bank B"). The EFT card issued by Bank A can be used at automated teller machines (ATMs) and point-of-sale (POS) terminals throughout Bank A's EFT system by the consumer to receive cash (or make other electronic transfers) and make purchases at merchant locations. Bank A, through the automated clearing house or by other

means, orders the consumer's account at Bank B to be debited or credited, depending on the transaction. The consumer has authorized Bank B to permit the debits or credits to the consumer's account, but there is no agreement between Bank A (the service-providing bank) and Bank B (the account-holding bank). The Act and regulation impose a number of requirements on Bank B, absent a provision in the regulation to the contrary. Bank B may not offer *any* EFT services of its own to its account holders, and does not have control over, or even knowledge of, many aspects of the agreement between the consumer and Bank A.

Commenters asked the Board to clarify the respective duties of the two institutions under such a program. Many of the comments suggested that both banks have some responsibilities. However, since there is no agreement regarding the service between the institutions, assigning some disclosure responsibilities to one bank and some responsibilities to the other does not appear to be feasible and, in addition, would be confusing to consumers using the service. Furthermore, the Board questions the equity of imposing any responsibility under the regulation upon Bank B, which is not offering this service to the consumer. Therefore, the proposal would absolve Bank B from all responsibilities and would require Bank A to undertake all of them.

Bank A would be required to comply with § 205.7, but the disclosures would only relate to the EFT service it provides. For example, under § 205.7(a)(9), Bank A would disclose the circumstances under which it will provide information to third parties about the electronic fund transfers made by the consumer under the agreement. Under § 205.7(b), Bank A would have to make disclosures only to those consumers who had contracted for the EFT service. Under § 205.8(b), it would only have to give the error resolution notices to the consumers for whom it provides electronic fund transfer services. The documentation requirements of § 205.9 would apply, except that the service-providing institution would not have to disclose charges imposed by the account-holding institution and would only have to give the account balance disclosures, required by § 205.9(b)(4), if such disclosures are applicable to the program offered by it to consumers. It would not have to give the account balances in the consumer's account at the account-holding institution.

The service-providing institution, under the proposal, would have to correct any errors in the electronic fund transfers made under its service. If the error was not corrected within 10 business days, the service-providing institution would have to order provisional recrediting of the consumer's account at the account-holding institution by initiating a recrediting and giving notice of the recrediting to the consumer. Finally, the financial institution providing the EFT service need only retain records (under § 205.13(c)) for those transfers made by the consumer pursuant to their agreement.

The Board understands that certain items of information may be unavailable to the service-providing financial institution. In addition, it is possible that the account-holding institution may make an error in posting to the consumer's account transfers made under this service. The account-holding institution would not have to comply with the Act's resolution procedures. The Board believes, however, that the service-providing institution can and should be able to correct errors committed either by itself or by the account-holding institution within the prescribed time periods.

The Board solicits comment on the proposal's approach to allocation of responsibility and on any operational difficulties that may be encountered by the service-providing institution in making disclosures or correcting errors.

Section 205.9—Documentation of Transfers. Section 205.9(a), implementing section 906(a) of the Act, requires institutions to make a receipt available to consumers at the time they initiate an electronic fund transfer from an electronic terminal. The receipt must include 6 items of information, to the extent they are applicable to the transfer. The introductory language in § 205.9(a) remains essentially unchanged from the earlier proposal.

Section 205.9(a)(1) requires institutions to disclose the amount of the transfer. Comments on the first proposal indicate that, particularly in interchange and shared electronic fund transfer systems, the financial institution at whose terminal the transfer is made may add a transfer fee to the amount requested or authorized by the consumer. For example, a customer of Bank A withdraws $50 from an automated teller machine operated by Bank B, which imposes a charge of $0.25 on the transfer. The Board proposes to permit the combined amount ($50.25 in the example) to be disclosed as the amount of the transfer, but requests comment on this issue.

Section 205.9(a)(2) requires disclosure of the date on which the transfer was initiated. Several commenters raised the issue of whether the date disclosed should be the date on which the consumer uses the terminal or the date on which the transaction is posted, if different. The Board believes that the date of initiation is the most meaningful to the consumer and that providing it creates the fewest operational problems. For these reasons, the Board proposes to require disclosure of the initiation date on the terminal receipt.

The first proposal would have required financial institutions to indicate the type of transfer and the consumer's account from or to which funds were transferred. Many comments indicated that requiring the financial institution to generate the account identification, which the Board envisioned would normally consist of the account number, would create operational, privacy, and security problems. For these reasons, the Board has substantially revised §§ 205.9(a) (3) and (4). As now proposed, paragraph (4) would require identification of the access device, such as the card number, rather than a specific identification of the consumer's account. This identification is not intended to include a personal identification number or other security code.

Because nearly all such devices access only one savings account and one checking account, the Board believes that identification of the device, combined with the type of account, would provide full identification of the affected account. Therefore, the Board proposes to require not only the type of transfer, such as a payment or withdrawal, but a generic identification of the account, such as checking or savings. The example in § 205.9(a)(3) illustrates the level of information required. Section 205.9(a)(3) also continues to permit the institution to convey the information by a code, but has been redrafted to make it clear that the code explanation must appear on the receipt itself.

The first proposal would have required a disclosure of the "location" of the terminal, although the statutory language called for "location or identification." The current proposal would permit the financial institution to provide either a location or an identification, such as a terminal number. If a location is shown on the receipt, the format requirement of § 205.9(b)(1)(iv) must be met. If the institution chooses to use an identification, such as a terminal number or code, that identification need

not be explained elsewhere on the receipt. However, on the later statement which reflects that transfer, the location to which the number or code relates must be disclosed.

Section 205.9(a)(6) requires an institution to identify any third party to or from whom funds are transferred by means of an electronic terminal. As in the first proposal, where the consumer provides information on the identity of the third party by means of a handwritten or other non-machine-readable document placed in the terminal, the institution would not be required to capture the identify of that third party on the receipt. The Board wishes to emphasize, however, that the periodic statement reflecting that transaction must include the identity of that third party. Paragraph (6) also permits the use of a code to identify the third party, but the code must be explained elsewhere on the receipt. For example, a financial institution which permits payments to certain utilities to be made through its automated teller machines may wish to preprint, on the back of the documentation, a series of codes and the specific utilities to which they relate. A consumer using this service would key in the code relating to the utility for which payment is being authorized and the receipt would generate that code.

Section 205.9(b), implementing section 906(c) of the Act, requires institutions to provide consumers with periodic statements summarizing the electronic fund transfer activity occurring in the consumer's account during the statement cycle. Institutions subject to § 205.9(b) must provide a written statement to the consumer for each month in which there was electronic activity in the account. Where no activity occurs, the statement must be provided on at least a quarterly basis. Many commenters requested a longer statement cycle, but the Board believes that the language of section 906[c] of the Act is clear.

Set forth below is an example of a periodic statement illustrating the requirements of proposed § 205.9(b). The Board wishes to emphasize that, while information must be provided for each account accessible by electronic fund transfers, a financial institution may furnish a single periodic statement that combines information on more than one account.

A sentence has been added to the introductory language to make it clear that the information required by paragraph (b)(1) may be shown on accompanying documents, rather than on the periodic statement itself. This is in accord with the language of the Act, which specifically authorizes the use of accompanying documents. For example, the institution may furnish copies of terminal documentation to reflect transfers initiated by the consumer through electronic terminals. This would be analogous to the "country club" billing procedures permissible under Regulation Z and the Truth in Lending Act. (The example shown below is more similar to "descriptive" billing statements.)

Section 205.9(b)(1)(i) would require the financial institution to show the amount of the transfer. The Board is aware that, in a shared or interchange system, the account-holding institution may be unable to determine which portion, if any, of the transfer represents a transaction charge imposed by the institution at whose terminal the transfer was initiated. The Board's proposal would permit the account-holding institution to disclose the entire amount as the amount of the transfer. For example, the $100.25 debit shown in the periodic statement represents a $100 withdrawal authorized by the consumer, together with a $0.25 charge imposed by the bank which operates the terminal at LaGuardia Airport.

The date disclosure required by § 205.9(b)(1)(ii) depends on the type of transfer involved. Transfers initiated by a consumer at an electronic terminal require the disclosure of the date of initiation in all cases, as well as the date that the amount is posted to the consumer's account, if different from the initiation date. In proposing this requirement, the Board believes that disclosure of both dates is essential to the consumer for purposes of account reconciliation and recollection of transfers made through a terminal. However, in preauthorized and telephone/initiated transfers, the Board believes that the initiation date may be irrelevant to the consumer and § 205.9(b)(1)(ii)(B) requires disclosure only of the posting date for such transfers. The first two columns in the example below reflect the date disclosures required for the three types of transfers.

Section 205.9(b)(1)(iii) requires the institution to indicate the type of transfer and the type of account affected by the transfer. This requirement would be satisfied by the same type of information as provided under § 205.9(a)(3), such as "withdrawal from checking" or "payment from savings." The Board specifically requests comment on any operational problems which may prevent an institution from describing the type of transfer. For example, several commenters indicated that, in a shared or interchange system, an account-holding institution may be unable to determine the nature of a debit, such as a payment or withdrawal, received from another institution.

The information required by paragraph (1)(iii) may be provided by a code that is explained elsewhere on the periodic statement or in accompanying material. For example, in disclosing a transfer initiated through a terminal, the institution may provide an explanation of the code on a copy of the terminal receipt provided with the periodic statement. In the illustration below, the transfer codes are preprinted on the periodic statement itself. Because the statement reflects only checking account transfers, a generic identification of the account is unnecessary in the list of transfer codes. The sole exception is transfer code 61, which affects the customer's savings account, as well as the checking account for which the statement is issued. In a combined statement, a further identification of the type of account would be necessary.

Section 205.9(b)(1)(iv) sets forth the disclosure requirements for terminal location. The Board proposes to limit this requirement to transfers initiated by the consumer at electronic terminals because it appears to be relevant only in these cases. In the statement below, transfer types 01, 03, 05, 21, and 61 represent terminal transfers which would be subject to this requirement.

In implementing this provision, the Board seeks to provide enough specificity to assure the consumer of a complete description, while at the same time allowing institutions the flexibility to devise a meaningful identification. Therefore, paragraphs (A) through (C) provide three different ways of describing the location of the terminal. The institution may choose any one of these methods in making this disclosure.

Paragraph (A) refers to a street address such as "500 Main St., Anytown, OH" or "Chestnut/Oak Sts., Anytown, OH." Paragraph (B) permits the institution to describe the location with a term, such as "LaGuardia Airport, N.Y., N.Y.," which has public recognition and conveys a particular location to the consumer. Paragraph (C) permits disclosure of the name of a merchant or financial institution on whose premises a terminal is placed. The Board envisions that this alternative would be used primarily to describe point-of-sale terminals at a seller's place of business. In the example below, the descriptions of those transfers designated as type 21 illustrate paragraph (C).

Footnote 2 to this paragraph is intended to prevent the account-holding

institution from describing the location of its own terminals simply by the name of the institution, rather than a more specific geographic location. For example, if a customer of XYZ Bank withdraws funds through an automated teller machine located at a branch of that bank, the terminal location may not be described merely as "XYZ Bank, Anytown, OH."

If, on the terminal documentation provided under § 205.9(a), the institution used a terminal number or other identification, rather than a location, the institution must repeat that identification on the periodic statement along with one of the required descriptions of the terminal's location. The institution may describe the location on material accompanying the periodic statement, such as a master list of terminal numbers and the locations to which they relate.

Section 205.9(b)(1)(v) requires the institution to disclose the name of any third party to or from whom funds are transferred. Footnote 3 exempts from that provision the deposit of checks or similar negotiable instruments in an electronic terminal for later manual processing. In such cases, the institution would not be required to capture manually the names of third parties on the instruments for later disclosure on the periodic statements.

The second sentence of § 205.9(b)(1)(v) sets forth special requirements regarding disclosure of the name of any third party for transfers initiated by a consumer at an electronic terminal. In such cases, the institution must repeat on or with the periodic statement the name or code used on the terminal documentation to identify the third party. For example, where the terminal documentation in a point-of-sale transaction showed the merchant's "doing business" name, the periodic statement must reflect that name and not the name of any parent corporation. If the institution used a code on the terminal documentation, the periodic statement or accompanying material must also provide the name of the third party to which the code relates.

The Board wishes to emphasize that the proposed location and third-party requirements may in some cases be satisfied by a single disclosure. For example, for the purchases (transfers labeled "21") shown below, the information contained in the column headed "Description of Transfer" represents both the third party merchants to whom funds were transferred and the locations of the point-of-sale terminals involved.

Section 205.9(b)(2) requires the institution to disclose the number of the consumer's account or accounts to which the periodic statement relates. As illustrated in the statement below, the account number need be shown only once on the periodic statement, rather than repeated with each description of a transfer.

Section 205.9(b)(3) requires disclosure of the total amount of any fees or charges assessed for electronic fund transfers or services. Only those charges which are specifically related to electronic fund transfer services must be disclosed. For example, if the institution imposes a fixed fee for use of an account whether or not the consumer utilizes the electronic fund transfer services associated with that account, no disclosure need be made. The amount shown must be an aggregate of all charges imposed. The institution need not itemize the various types of charges it imposes.

The Board is aware that in a shared or interchange electronic fund transfer system, the account-holding institution may have difficulty in segregating the amount of the transfer from any charge imposed by another institution at the point of origination. This proposal would permit institutions to disclose these amounts simply as the amount of the transfer under § 205.9(b)(1)(i), with no portion of that amount allocated to the fees or charges to be disclosed under paragraph (3). Comment is specifically requested on this issue.

Proposed §§ 205.9(b) (4) and (5), which require the statement to show beginning and ending account balances and the address and telephone number to be used for inquiries or error notifications, are essentially unchanged from the first proposal.

Section 205.9(b)(6) applies to institutions which utilize the telephone alternative set forth in proposed § 205.10(a)(1)(iii) for providing notice to consumers regarding preauthorized transfers to consumers' accounts. Under paragraph (6), the institutions must inform consumers, on each periodic statement, of the telephone number to be used for that purpose.

BILLING CODE 6210-01-M

XYZ BANK

Statement of Account

Direct Inquiries to:

Mary and John Doe
421 Elm Street
Anytown, OH 44000

(216) 111-1111
P. O. Box 1234
Anytown, OH 44000

CHECKING ACCOUNT 44-66-8800

Beginning Balance 794.65

Posting Date	Initiation Date	Credits	Debits	Type of Transfer	Description of Transfer
	08 7		25.00	01	#123 - 500 Main St., Anytown, OH
08 13	08 10	114.13		03	#568 - Chestnut/Oak St., Anytown, OH
08 13	08 12		72.34	21	ABC Dept. Store, Anytown, OH
08 15			278.49	51	Anytown Savings & Loan
08 17		438.73		31	ACME Steel Corp.
08 20			23.86	41	1st Bank of Anytown
08 22			52.50	41	ABC Dept. Store
08 22	08 20		100.25	01	#24A - LaGuardia Airport, NY, NY
	08 21		88.00	21	Metropolis Dept. Store, NY, NY
08 24		704.65		31	Anytown Hospital
08 27	08 25		59.64	05	#456 - E-Z Shopping Mall, Anytown, OH Ohio Electric Power Co.
08 27	08 25	65.00		03	#456 - E-Z Shopping Mall, Anytown, OH
	08 29		43.42	21	A-1 Food Store, Anytown, OH
	08 27		300.00	61	#123 - 500 Main St., Anytown, OH

Ending Balance 1,073.90

Transfers

01 - Withdrawal
03 - Deposit
05 - Utility payment
21 - Purchase
31 - Direct deposit of payroll
41 - Telephone bill payment service
51 - Preauthorized debit
61 - Transfer from checking to savings

BILLING CODE 6210-01-C

Sections 205.9(c) and (d) provide limited exceptions to the general periodic statement requirements set forth in § 205.9(b). Under § 205.9(c), a financial institution need not provide a periodic statement for passbook accounts which cannot be accessed electronically except by preauthorized electronic credits. Instead, the institution may simply update the passbook information whenever the passbook is presented by the customer. Section 205.9(d) permits institutions to send periodic statements on a quarterly rather than a monthly basis on non-passbook accounts which cannot be accessed electronically except by preauthorized credits. It should be noted that the format and content of the quarterly statement must satisfy § 205.9(b). These provisions have been redesignated, but are otherwise unchanged from the first proposal.

Section 205.10—Preauthorized Transfers. Section 205.10(a)(1), which was designated § 205.8(c) in the first proposal, implements section 906(b) of the Act. The Act requires an institution to provide a consumer whose account is scheduled to be credited with a preauthorized transfer from the same payor at least once every 60 days with either positive or negative notice of whether the transfer occurred, except where the payor provides positive notice of the transfer to the consumer.

The Board had proposed three additional ways in which financial institutions could satisfy the statutory requirement. Proposed § 205.8(c)(1)(iii) provided that notice would be considered given if the institution transmitted a periodic statement within 2 business days after the transfer was scheduled to occur. A number of commenters pointed out, and the Board agrees, that a periodic statement is simply one permissible means of providing positive or negative notice and is therefore implicit in paragraphs (a)(1)(i) and (a)(1)(ii). Section 205.8(c)(1)(v) of the proposal would have required the institution to notify the consumer only where the failure to receive the transfer resulted in an overdraft or a credit extension or an automatic transfer to cover an overdraft. This alternative would have been available only if the institution paid all items presented and imposed no overdraft or related charges. Comments characterized this alternative as extremely burdensome to institutions and unfavorable to consumers. The Board has therefore eliminated this alternative.

The Board has decided to publish for comment a modified version of a provision that appeared in the first proposal. Section 205.8(c)(1)(iv) of the first proposal would have permitted a financial institution to establish a telephone line that the consumer could call to ascertain whether an expected preauthorized credit had arrived. The new proposal would also permit use of a telephone number but the financial institution would have to inform the consumer of the right to receive notice. The consumer would then have a choice as to the form of notice. The proposal would not prohibit an institution from charging for paper notice but the Board expects any charge imposed to be reasonable. If the consumer elects to use the telephone number, the proposal would require the institution to disclose the number at the time of the election and on each periodic statement.

Two other changes have been made in the proposal. The introductory language has been changed to clarify the type of notice the payor must provide in order for the exception to apply. The institution need not provide notice where the payor informs the consumer that the transfer has been "initiated." For example, a pay slip furnished by an employer would constitute sufficient notice by the payor in a direct payroll deposit program. Second, the word "transmitting" has been substituted for the word "providing" to make clear that where the institution provides written notice, it need only be sent by the institution, not received by the consumer, within 2 business days.

The Board has postponed final action on § 205.10(a)(2) until after its consideration of Subpart C of Regulation J. This provision would require institutions that accept preauthorized credits subject to paragraph (a) to credit the transfer as of the business day on which the institution receives value. The proposal has been modified to address an operational problem with the first proposal, namely, that the funds be available to the consumer at the opening of business on the date the transfer is scheduled to be made. In addition, the institution need not take action under this paragraph until it is actually in receipt of the funds.

Section 205.11—Procedures for Resolving Errors. Before discussing the specific provisions of § 205.11, the Board wishes to invite comment on the quesiton of charging for complying with the error resolution procedures. Comments on the first proposal and the Board's experience with the Fair Credit Billing Act indicate that a number of financial institutions contemplate imposing charges when a consumer seeks copies of documents (which is an error under proposed § 205.11(a)(1)(vii)) and possibly for investigating other notices of error as well. A consumer would not know in advance how a notice of error would be resolved. The Board is concerned that, fearing the imposition of charges should an error not be resolved in their favor, consumers will be reluctant to exercise their rights under the statute. On the other hand, a financial institution probably should be permitted to impose a charge when a consumer requests copies of documents for business or tax purposes.

The Board solicits comment on whether any charges for complying with the error resolution procedures should be prohibited. Alternatively, the Board invites comment on (1) permitting reasonable charges for copies of documentation requested under this section but prohibiting all other charges (such as investigation fees) for complying with the error resolution procedures; or (2) permitting the financial institution to impose reasonable charges for error resolution as long as the charges do not violate § 914 by constituting a waiver of the consumer's rights.

This section corresponds to § 205.10 of the first proposal. Section 205.11(a) now contains the definition of "error," which in the first proposal appeared as § 205.2(i). Section 205.11(a)(1)(i), which provides that an unauthorized electronic fund transfer constitutes an error, remains unchanged from § 205.2(i)(1) of the first proposal. The first proposal's commentary, however, stated that a consumer's notifying a financial institution of the loss or theft of an access device would be considered an error. Such an interpretation would have required a financial institution to follow the error resolution procedures where unauthorized use was a possibility rather than an actual occurrence. Numerous commenters argued that, since the consumer's liability for unauthorized use terminates upon the consumer's notifying the financial institution of the loss or theft of the access device, treating such notice as an error would not grant the consumer greater protection. Furthermore, many commenters were concerned that they would be unable to undertake a meaningful investigation since a notification of loss or theft would not necessarily focus on any particular transfer or group of transfers that might be unauthorized. The Board believes that notification to the financial institution of the loss or theft of the access device, absent an allegation of unauthorized use, would not require the

institution to comply with the requirements of § 205.11. An institution must, however, treat allegations of possible unauthorized use as errors.

Sections 205.11(a)(1)(ii), (iii), and (v), which correspond to §§ 205.2(1)(2), (3), and (5) of the first proposal, remain unchanged.

Section 205.11(a)(1)(iv), which corresponds to § 205.2(1)(4) of the first proposal, has been changed in two respects. The first proposal defined as an error "a computational error or similar error of an accounting nature made by the financial institution." The language has been changed in response to several comments to make clear that this paragraph applies only to errors relating to electronic fund transfers. In addition, the word "bookkeeping" has been substituted for "accounting" to avoid any implication that the Board intends to include errors of judgment that may occur in making accounting decisions. The provision, as presently written, would include arithmetical errors, posting errors, errors in printing figures, and figures that were jumbled due to mechanical or electronic malfunction.

Section 205.11(a)(1)(vi) corresponds to § 205.2(1)(8) of the first proposal. The previous draft treated as an error any misidentified or insufficiently identified transfer, or any transfer not in the amount or on the date indicated on or with any required documentation. This proposal specifically indicates that the financial institution must treat as an error an inquiry about a transfer that the consumer does not recognize. In addition, any failure to identify the transfer in accordance with § 205.9 (which would include the correct amount and date) is an error.

Section 205.11(a)(1)(vii) provides that error resolution procedures are activated by a consumer's request for any documentation required by §§ 205.9 and 205.10(a) or for any additional information or clarification concerning an electronic fund transfer. In § 205.2(1)(7) of the previous proposal, the failure to provide required documentation was considered an error, whereas the current proposal regards only consumers' requests for such documentation to be errors. These requests for documentation, however, would be considered errors whether or not the documentation had been previously provided. The current provision specifically indicates that an error includes any request for information or copies of documents that the consumer wants in order to find out whether a mistake exists in the consumer's account regarding an electronic fund transfer. Thus, if a consumer requests documentation or information regarding a particular transfer without alleging a mistake, that documentation or information must be provided to the consumer in accordance with § 205.11.

Section 205.11(a)(2), which is new, provides that certain routine requests for information and copies of documents are not considered errors. Under this paragraph, a financial institution has no error resolution responsibilities when a consumer makes a routine inquiry regarding the balance in the consumer's account. This would include, for example, an inquiry made under proposed § 205.10(a)(1)(iii) to find out whether a preauthorized transfer has occurred. This section also exempts from the error definition any request for information or documentation for tax or business purposes. The Board solicits comment on this provision, and is particularly interested in knowing whether there are other types of inquiries that should not be considered errors under § 205.11.

Section 205.11(b) corresponds to § 205.10(a) of the previous proposal. In response to several comments, clarifying language has been added to indicate that a financial institution has error resolution responsibilities only when *the consumer* notifies the financial institution of an error. The financial institution need not comply with the error resolution procedures if it or its auditor, for example, discovers an error, or if any other party, other than an agent of the consumer, notifies the financial institution concerning an error.

Section 205.11(b)(1) corresponds to § 205.10(a)(2) of the first proposal. That proposal, like the current proposal, provides that the error notification must be received no later than 60 days from transmittal of the periodic statement first reflecting the alleged error.

Some commenters stated that this 60-day period should begin when the consumer receives the terminal receipt. The Board still believes, however, that the 60-day period is more precisely and simply calculated (with two minor exceptions noted below) from transmittal of the periodic statement. Other commenters objected to limiting the consumer's notice period by using the periodic statement that *first* reflects the error, claiming that the consumer may not have the necessary information at that point to assert an error. The Board has responded to this concern by providing the consumer with an additional 60 days to assert an error after the consumer receives the additional documentation or information needed to assert an error.

Additional language has been added to address the application of the 60-day time limit in two specific cases. First, under section 205.9(c) (involving passbook accounts that may not be accessed by any electronic fund transfers other than preauthorized credits), if the financial institution chooses to update the consumer's account with the amount(s) and date(s) of each transfer upon presenting the passbook rather than to provide periodic statements, the 60-day period runs from the updating (in the manner required by section 205.9(c)) that first reflects the alleged error. Second, as noted above, where the consumer requests additional information, clarification, or documentation so that he or she can determine whether to assert an error within the meaning of paragraphs (a)(1)(i) through (vi), a second 60-day time period runs from the financial institution's transmitting to the consumer the additional information, clarification, or documentation requested.

The second sentence of section 205.11(b)(1) corresponds to sections 205.10(a)(1) (i) and (ii) of the first proposal. Section 205.10(a)(1)(i) of the first proposal provided that the notification of an error (referred to in the present proposal as a "notice of an error") should enable the financial institution to identify the consumer's account. A number of the comments received from both consumer groups and financial institutions objected to the omission of the statutory language of section 908(a)(1) that the notice should enable the financial institution to identify the consumer's name as well as the account number. The present proposal reflects the statutory language.

Section 205.10(a)(1)(ii) of the first proposal set forth the information that the consumer should provide in notifying the financial institution of an alleged error. Language has been added to the present section 205.11(b)(1) to indicate clearly that this provision does not apply to errors asserted under paragraph (a)(1)(vii). Section 205.10(a)(1)(ii) of the first proposal also referred to "any documentation required by this regulation." As a result of several comments, the current proposal specifically identifies the documentation intended to be covered in this provision. The Act refers to the documentation required by sections 906(a) (terminal receipts), 906(b) (positive or negative notice of preauthorized credits), 906(c) (periodic statements) and 906(d) (updating of passbook accounts). This proposal specifically refers to sections 205.9 and 205.10(a), the regulatory

counterparts to these sections, and in doing so, includes the documentation required by section 906(e) and section 205.9(d) (quarterly statements for certain non-passbook accounts). This paragraph also reflects a change suggested by some commenters, namely, that the consumer would be required to provide the financial institution with the date of the alleged error, if possible, together with the type and the amount of the alleged error. For example, if the periodic statements shows ten $25 transfers, identification of the date(s) of the transfer(s) questioned would prove helpful and possibly necessary.

Section 205.11(b)(1) of the present proposal also retains the provision that the reasons for the consumer's belief that an error has occurred and a description of the suspected error need only be provided to the extent possible. The commentary to the first proposal suggested that a financial institution would not be relieved of error resolution responsibilities where a consumer is unable to describe the error or articulate the amount of or the reasons for the error. A number of the comments objected to both the language of the provision and the interpretation suggested in the commentary as permitting vague assertions (that may be difficult to investigate) to trigger error resolution procedures. The Board still believes that its position is proper and necessary in order to minimize the possibility that a consumer could be denied the protections of section 205.11 by not being able to understand the cause or nature of the error or articulate the reasons for the error. Consequently, where a consumer's notification is somewhat vague or imprecise, a financial institution is expected to make a good faith effort to identify and resolve the alleged error.

Section 205.11(b)(2), which corresponds to section 205.10(a)(3) of the first proposal, remains unchanged.

The introductory language to the previously designated section 205.10(b) has been combined with section 205.10(b)(1) and the alternate time limit provision of section 205.10(b)(2) and is now reflected with one modification as sections 205.11(c)(1)(i) and (ii) in the current proposal. The concept of relieving a financial institution of its error resolution responsibilities when a consumer subsequently agrees that no error has occurred is reflected in section 205.11(g) of the current proposal. To make clear that the term "report" contemplates oral rather than written communication, the word "orally" has been inserted. This change is also reflected in sections 205.11(e)(2) and (f)(2).

Section 205.11(c)(1)(ii)(A), which corresponds to section 205.10(b)(2)(i), has been changed to reflect explicitly the Board's position regarding the amount that can be withheld by the financial institution when provisionally recrediting a consumer's account. The Board suggested in the commentary to the first proposal that $50 was the maximum that could be withheld. The Board continues to believe that this is the appropriate interpretation of the Act. Under section 909(a), in order to impose liability greater than $50, the financial institution must prove that the consumer failed to report loss or theft of the access device within two business days of learning of it and that the institution could have prevented the loss had timely notice been given. Permitting the institution to withhold up to $500 under error resolution would relieve it of the burden of proof imposed by the statute. The provision has been further classified to indicate that a financial institution may withhold up to $50 only when an unauthorized electronic fund transfer is suspected. The Board believes that to allow the financial institution to withhold more than $50 or to permit the financial institution to withhold any amount without suspecting an unauthorized electronic fund transfer would undermine the purpose of the recrediting provision.

Section 205.11(c)(1)(ii)(B), formerly designated section 205.10(b)(2)(ii), deals with the consumer's having full use of provisionally recredited funds. The first proposal required notification of the consumer 3 business days before debiting a provisionally recredited amount. The current proposal requires notice upon debiting a provisionally recredited amount. Therefore, the Board proposes in section 205.11(c)(1)(ii)(B), in order to ensure the full use of recredited funds, to require that the financial institution honor any items drawn on the provisionally recredited funds prior to the time that the consumer either receives the notice required by section 205.11(f)(2), or can be expected to have received the notice, whichever is earlier.

Section 205.11(c)(1)(ii)(C), which requires that the consumer be provided with a notice of provisional recrediting, corresponds to section 205.10(b)(2)(iii). Since the current proposal no longer requires notification of the consumer 3 business days before debiting a provisionally recredited amount, the notice has been modified accordingly. The current proposal requires that the consumer be notified of the amount and the date of the recrediting and of the fact that the consumer will have the use of the recredited funds while the financial institution investigates the alleged error and determines whether an error occurred. Comment is invited on whether the financial institution should notify the consumer that the financial institution is required to pay checks written against the recredited funds until the consumer receives the notice of debiting.

A number of commenters asked for clarification on whether the recrediting provisions apply where a consumer merely requests additional information or documentation under section 205.11(a)(1)(vii). The Board believes that resolution in these cases consists of providing the requested information or documentation, and that the financial institution should be able to do this within 10 business days. If the institution takes more than 10 business days, however, the recrediting procedures will then apply. The amount recredited would be the amount of the transfer(s) about which the consumer requested information or documentation.

Section 205.11(c)(2), which corresponds to the final sentence of § 205.10(b)(2), remains unchanged except for the deletion of unnecessary explanatory language.

Section 205.11(d) is new. Paragraph (d)(1) makes clear that the regulation does not require an investigation of an alleged error where the financial institution would prefer to make a final correction to the consumer's account in the amount or in the manner alleged by the consumer to be in error. This course of action should not involve more than 10 business days since the decision to correct without investigating would probably be made almost immediately after a financial institution receives a notice of an error. This proposal in no way relieves the financial institution from complying with any other applicable requirements of the section (for example, the correction provisions of sections 205.11(e)(1) and (2)).

Many comments indicated that financial institutions cannot, within the 10-business-day provision of section 205.11(c)(1)(i), investigate alleged errors arising out of transfers that involve third parties with whom financial institutions do not have agreements (for example, payroll deposits from a third party or utility payments to a third party) if the financial institution is required to investigate the alleged error with the third party. The commenters also argued that if they must carry the investigation to a third party, they will be forced to provisionally recredit a consumer's

account in order to take advantage of the alternative 45-day time period.

Consequently, in section 205.11(d)(2) the Board proposes to address this issue by limiting the scope of investigation that must be undertaken by the financial institution where a third party is involved. The proposal provides that a financial institution need only review its own records when investigating an alleged error concerning transfers to or from a third party with whom the financial institution does not have an agreement. The Board expects that limiting the extent of investigation required will alleviate the concerns regarding provisional recrediting. Section 205.11(d)(2) would also apply to a consumer's request for information or documentation that is not in the institution's possession, such as a copy of a utility bill that was paid by means of an electronic transfer. In such a case, resolution would consist of a timely response to the consumer that the institution does not have copies of utility bills.

Numerous commenters asked whether an independent verification of information was required when a financial institution, in investigating an alleged error involving a third party (including a third party with whom the financial institution has an agreement), receives information from that third party. Section 205.11(d)(3) responds to this issue and provides that a financial institution may rely upon information supplied by third parties and is not obliged to verify the accuracy of such information.

Sections 205.11(e) and (f) correspond to section 205.10(c) of the first proposal. Section 205.11(e)(1) is identical to the first proposal except for the addition of clarifying language regarding to the correction of the account in the case of an unauthorized electronic fund transfer. The regulation reflects the fact that the financial institution, at this point in the resolution process, must have satisfied the requirements of section 205.6(a) in order to impose any liability on the consumer for an unauthorized electronic fund transfer. In order to impose liability on the consumer in an amount greater than $50, however, the financial institution must satisfy the additional requirements detailed in section 205.6(b). The Board invites comment on the manner in which financial institutions anticipate satisfying the requirements of section 205.6(b) in those instances in which financial institutions seek to impose liability in excess of $50.

In an effort to ease compliance with the notification of corrections requirement, a provision has been added to paragraph (e)(2) (formerly paragraph (c)(1)(ii)) expressly permitting a financial institution to notify the consumer of a correction by clearly reflecting the correction on a periodic statement as long as the periodic statement is mailed or delivered within the 10-business-day or 45-day time limits of sections 205.11(c)(1)(i) or (ii).

Paragraphs (f) (1) and (3), formerly (c)(2) (i) and (iii), remain the same as the earlier proposal, except that the last sentence of the first proposal's paragraph (c)(2)(iii) is now contained in the current proposal's paragraph (f)(1). Paragraph (f)(2), however, as previously mentioned, no longer requires that a financial institution notify the consumer 3 business days before debiting a provisionally recredited amount. Many commenters objected to the first proposal, claiming that notifying the consumer 3 business days in advance would encourage the withdrawal of recredited funds to which the consumer might not be entitled. In response to the comments, the current proposal requires in § 205.11(f)(2) that, upon debiting a provisionally recredited amount, the financial institution must notify the consumer of the date and amount of any such debiting and of the fact that the financial institution will honor any items that have been drawn on the provisionally recredited funds prior to the time the consumer received or should have received the notice, whichever is earlier. It is hoped that notice at the time of debiting, rather than prior to debiting, will reduce substantially the potential for fraud.

Section 205.11(g) replaces and clarifies the introductory language in § 205.10(b) of the first proposal which would have relieved a financial institution of its duty to comply with the error resolution procedures should the consumer agree, after having properly alleged an error, that no error in fact occurred. Consumer comments objected that the language in the first proposal was too broad and might have the effect of allowing an oral explanation by the financial institution to replace the written explanation required by § 205.11(f)(1). The Board contemplates that this provision would only apply where the consumer discovers that no error occurred (for example, that a questioned transfer was in fact authorized and in the amount and on the date indicated) and voluntarily withdraws the notice.

In § 205.11(h) the Board proposes to make clear that a financial institution has no further reponsibility under § 205.11 after complying with that section's provisions if the consumer continues to make substantially the same allegation with respect to the alleged error. This provision would also preclude a consumer from reasserting the same error that appears in a different form (e.g., if the consumer alleges that a certain $20 transfer was erroneous, the consumer cannot reassert the same error by claiming that a subsequent periodic statement should reflect an account balance of $500 instead of $480).

Section 205.11(i) corresponds to § 205.10(d) of the first proposal which provided that the error resolution procedures of the Electronic Fund Transfer Act and Regulation E, rather than those of the Truth in Lending Act and Regulation Z, govern electronic fund transfers that also involve credit extensions made under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account. Many commenters requested the Board to specify which provisions of Regulation Z were superseded by Regulation E. In response to these requests, the current proposal indicates that, in these combined EFT-credit transactions, the financial institution must comply with the error resolution procedures of § 205.11 and that the billing error definition of § 226.2(j), the error notification requirements contained in § 226.2(cc), and the error resolution procedures of § 226.14(a) do not apply. The Board contemplates that other provisions of Regulation Z, such as § 226.14(e) (which governs credit reports on amounts in dispute) will still apply to the credit extension portion of the combined transaction. The Board, in soliciting comment on this section, is particularly interested in receiving comment on operational problems that financial institutions foresee in satisfying their error resolution responsibilities in combined EFT-credit transactions.

(3) *Economic Impact Analysis. Introduction.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies sections of the regulation that are being reissued in proposed form for public comment.[1]

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund

[1] The analysis presented here is to be read in conjunction with the economic impact analyses that accompany the Board's final rules in this issue and at 44 FR 18474, March 28, 1979. The sections of the regulation have been redesignated.

transfer (EFT) services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. *It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or state law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.*

Analysis of regulatory and statutory provisions. Section 205.4(b) proposes rules for compliance when the service-providing financial institution effects an electronic transfer to a consumer's account at another institution. The service provider must perform all applicable duties imposed by the Act in accordance with its agreement with the consumer. The financial institution receiving the electronic transfer on behalf of a consumer is relieved of the responsibility to issue disclosures, resolve errors, or otherwise comply with the Act. Institutions, especially small institutions, not offering electronic transfer services may have no choice about accepting externally initiated electronic debits and credits to their consumer accounts; these institutions are therefore not burdened with regulatory compliance costs, while consumers are assured of the Act's protection through the service provider.

Under the proposal, however, a consumer may be subjected to certain risks. An error may occur at the transfer-receiving institution that is not reflected in the documentation furnished by the service provider. For example, an electronic transfer of $100 initiated by the consumer through the service provider may, through some error, be reflected as a $1,000 debit to the consumer's account at the receiving institution. Under the proposal, the receiving institution will not be required to furnish periodic statements or follow the statutory error resolution procedures. The Board requests comment on whether consumer protections are likely to be lost as a result of this regulatory provision. The Board also solicits comment on the relative costs and benefits of the following alternatives: requiring full compliance by both institutions; the current proposal requiring no compliance by an institution that merely receives externally initiated electronic debits and credits to consumer accounts; and requiring that the institutions jointly provide full documentation and error resolution for the consumer's account at the transfer-receiving institution.

Section 205.9 sets out the Act's transfer documentation requirements. Comment is invited on costs likely to be associated with this proposed revision of the section.

The Act requires that written documentation be made available to the consumer for every transfer at every terminal. Almost all existing terminals are equipped with printing devices. Commenters pointed out, however, that most devices can print only numerals. Replacements of existing devices with devices capable of printing alphabetic information would require large hardware and software expenditures by institutions. For this reason, the regulatory language was drafted to allow transfers at terminals to be documented by means of numeric codes, with the provision that codes must be explained on the document. This provision is expected to reduce the compliance cost burden.

The Act further requires identification of the type of account from or to which funds are transferred. This would be a problem in a shared system if the institution operating the terminal did not know the type of account being accessed at the institution holding the account, but it is expected that the consumer will be able to enter the required information at the terminal, so that compliance with this statutory provision will be possible. The Board solicits information on whether consumer entry of account type is a problem and on the costs of interchanging information regarding the type of account.

The Act requires that a periodic statement be delivered to the consumer at least monthly for each monthly or shorter cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred.[2] This timing requirement will impose substantial cost burdens on many financial institutions that otherwise would issue periodic statements less frequently than monthly (or, in the case of § 205.9(d) exempted accounts, on institutions that issue statements less frequently than quarterly). The costs of increased statement frequency will be passed on to consumers to some degree in the form of higher EFT prices or reduced availability of EFT services. The costs cannot be avoided because financial institutions must send statements even if consumers do not want them.

Another substantial cost burden will result from the lack of any statutory exception for inactive accounts. One commenter estimated that costs would average $0.25 per quarterly statement to an inactive account, implying a probable yearly nationwide cost from inactive account statements of $2.2 million in 1980.[3] Another commenter estimated that each statement will cost $0.52 to prepare and deliver. The Board solicits comments on the reasonableness of these estimates. This statutory provision may encourage financial institutions to close inactive EFT accounts or assess large inactivitiy fees, thereby restricting the availability, and increasing the costs, of electronic transfers to consumers.

The Act will impose another substantial cost on participants in the payments system by requiring statement documentation of the items of information listed in § 205.9(b) of the regulation. The costs of the Act's periodic statement requirements are likely to result mainly from initial fixed costs for conversion to new statement forms and for new computer hardware and software.

It may be especially costly to document the names of third parties involved in transfers. In many cases, the names of third parties will have to be added to the data stream manually by the consumer's financial institution. This may require the alteration or re-pricing of many well-established payment mechanisms which allow consumers to pay utility and other bills at electronic terminals but do not now result in a listing of the payee's name on the periodic statement. On the other hand, consumers may be able to identify payee names at terminals by the use of codes. Most terminals are not now equipped with alphabetic keyboards. Transfers to third parties may be facilitated if third-party creditors provide machine-readable payment coupons. The Board solicits comment on

[2] Exceptions to the monthly statement requirement are given in §§ 205.9 (c) and (d).

[3] This assumes that 10 percent of an estimated 22 million consumer EFT accounts are inactive in any quarter.

the feasibility and cost of alternative means of identifying names of payees, including individual consumers who are payees. Would individuals be precluded from receiving electronic payments from other consumers because of the Act's requirement that payee names be documented? The Board also solicits estimates of the cost of interchanging payee and terminal location names among institutions.

The Act requires that the periodic statement document the initiation date of each electronic transfer. The regulation relaxes that requirement for preauthorized and telephone transfers by requiring documentation of the posting or value date; many such transfers are initiated in advance of the dates on which value is to be transferred. This provision of the regulation assures that actual transfer dates are disclosed to consumers and that institutions need not incur costs in documenting initiation dates for these transfers. For transfers initiated by a consumer at a terminal, however, both the initiation date and the transfer date must be disclosed on the periodic statement. The Board requests comment on the costs and benefits associated with this regulatory provision.

The Act's requirement for descriptive periodic statements after May 10, 1980, will probably have a relatively greater adverse cost effect on small institutions than on larger institutions. Timely statement redesign and computer software changes will require fixed costs that larger institutions will be able to spread over their larger account bases. In any case, the Act's descriptive statement requirements will impose substantial adjustment costs on the financial institution industry.

Small-balance account holders, including many low-income consumers, will be adversely affected by the Act's documentation requirements because financial institutions will find more of their accounts too costly to service. Some institutions have recently offered semi-annual or annual statement accounts as a cost-saving alternative to closing many low-balance accounts. Some of these accounts that are eligible to receive electronic credits, such as Social Security payments, may be charged higher fees, or they may be closed rather than converted to quarterly statement accounts.

Section 205.10(a) implements the Act's requirement that a notification system be established for all recurring preauthorized credits to a consumer's account. The regulation provides that institutions furnish positive or negative notice to a consumer unless the consumer, having been informed of the right to receive positive or negative notice, elects to receive confirmation by telephone in accordance with § 205.10(a)(1)(iii), or unless the payor furnishes positive notice to the consumer. Institutions are not prohibited from charging fees for notices of preauthorized credits. The Board requests comment on the costs and current relative extent of each means of notification, and whether institutions presently charge consumers for notification. Under what circumstances would financial institutions find it least costly to arrange for notification by payors?

This subsection would also require a financial institution to credit a preauthorized electronic transfer to a consumer's account on the business day the transfer is received by the institution. The Act makes no comparable provision. The Board proposes this rule to ensure prompt availability of electronically transferred funds to consumers. Comment is solicited on the operational cost burdens and consequent consumer benefits of this proposal.

Section 205.11 of the regulation reiterates the Act's error resolution provisions, adding specific deadlines, increasing the number of procedural options, and clarifying the definition of error for purposes of resolution. The Act and regulation encourage prompt resolution of EFT errors. Prompt resolution benefits both consumers and financial institutions by reducing payment delays, lessening uncertainty, and increasing the effectiveness of the EFT payments mechanism.

Consumers receive a number of specific protections from the error resolution procedure. Consumers are entitled to prompt investigation of their error claims, prompt correction of errors, provisional recrediting of disrupted amounts should the financial institution take longer than 10 days to investigate, documentation of evidence used to resolve errors, and prompt, formal notice from the financial institution of various procedural steps it has taken. It is not possible to predict the magnitude of financial and psychic benefits consumers will enjoy from these protections. In particular, the provisional recrediting rule will benefit low-income consumers relatively more by protecting them from "catastrophic" losses of the use of their funds.

These consumer protections depend critically, however, on the consumer's compliance with a number of the Act and regulation's provisions. The consumer must act in a timely manner to allege that an error has occurred and, if requested by the institution, must provide written confirmation of an oral allegation. Furthermore, the allegation must be complete according to § 205.11(b)(1). Without timely action and an actual allegation of error, the consumer may forfeit certain rights to error resolution.

Financial institutions are likely to incur substantial costs in complying with error resolution provisions of the Act and regulation. Provisional recrediting of disputed amounts may prove to be the biggest cost; the provisional recrediting requirement will give institutions an incentive to resolve error allegations within 10 business days. Institutions that recredit disputed amounts expose themselves to the possible withdrawal and loss of those funds by persons acting fraudulently or in a financially irresponsible manner. In particular, § 205.11(c)(1)(ii)(B) requires that institutions honor certain items (including other electronic debit transfers) that the consumer has drawn on provisionally recredited funds, even if the institution has discovered no error occurred. There is no statutory limit on the amount that may be disputed and, hence, that may have to be provisionally recredited by the institution. The Board solicits suggestions of alternative, less costly means to implement the statutory requirement that consumers have full use of their funds if the error investigation exceeds 10 business days.

An institution is not required to investigate error claims beyond the information available to it directly, except where the institution has an agreement with a third party, as in the case of point-of-sale terminals operated under agreement with a merchant. This provision of the regulation encorages rapid response to error allegations.

Investigating alleged errors and providing the required notices, explanations, and documentation of evidence used will be costly to institutoins. Section 205.11(e)(1) requires institutions to provide written explanations of findings for every error allegation that is discovered to be wholly or partially without merit. Commenters made estimates of average error resolution costs that ranged from $3.50 to $10.00 per error allegation. One financial institution with relatively extensive EFT experience commented that 96 percent of allegations of error were discovered not to be errors; yet written explanations are required for these allegations. Legal, clerical, and administrative costs of furnishing written explanations are likely to be substantial.

Commeners made estimates of the average cost of providing documentation pursuant to § 205.11(e)(3) that ranged

from $3 to $12 per request. One commenter, estimating an average cost of $12 per request, predicted a nationwide cost of $26 million in 1980 for providing requested error resolution documentation alone.[4] Substantial costs may result from institutions' uncertainty as to what constitutes an error allegation and institutions' consequent formal investigation of a wide range of consumer inquiries.[5] On the other hand, the regulation will limit costs by specifically excluding certain inquiries from the error resolution procedure, freeing institutions from compliance responsibility if a consumer withdraws an error claim, and freeing institutions from the responsibility to investigate reasserted errors.

The regulation as proposed does not prevent financial institutions from imposing charges for the investigation of consumer error claims. The Board solicits comment on the costs and present levels of charges for error investigations by institutions, on the probable costs to consumers under the proposal, and on the desirability of amending the proposal to permit only reasonable charges for error investigation.

Uncertainties and possible costs associated with the error resolution provisions may give financial institutions an incentive to restrict EFT services to consumers who have demonstrated a high degree of financial responsibility. This may result in higher costs for all EFT users if system costs must be spread over fewer users, and it may lead to reduced availability of EFT services to low-income consumers, to the extent that low-income consumers are less likely to have had accounts at institutions and therefore to have established records of financial responsibility.

Small financial institutions may find the costs of error investigation to be proportionately greater drains on EFT profitability than larger institutions. Small institutions may also find error resolution aids such as terminal surveillance cameras to be relatively too costly. The error resolution provisions thus appear to place small financial institutions at some competitive disadvantage in the provision of EFT services.

[4] This assumes that 2.2 million requests for such documentation are made in 1980, or an average of one request per year for every 10 consumer EFT accounts.

[5] Failure to comply with the prescribed error resolution procedure can result in liability to the institution for actual damages, a penalty of from $100 to $1,000, court costs, and attorney's fees, as provided by Section 915 of the Act.

The Board solicits estimates of the costs and benefits to consumers and financial institutions of the proposed error resolution provisions.

(4) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board proposes to amend Regulation E, 12 CFR Part 205, by adding §§ 205.4(b), 205.9, 205.10(a), 205.11, an § A(8)(b) of Appendix A, to read as follows:

§ 205.4 Special requirements.

* * * * *

(b) *Services offered by financial institutions not holding a consumer's account.* Where a financial institution provides an electronic fund transfer service to or from a consumer's account held by another financial institution and the service-providing institution does not have an agreement with the account-holding institution regarding the service, the account-holding institution need not comply with the requirements of this regulation with respect to that service. The service-providing institution must comply with all requirements of this regulation, to the extent that the requirements relate to the service it provides to the consumer or the electronic fund transfers made by the consumer under the service. The service-providing institution shall comply with the requirements of § 205.11(c)(1)(ii)(A) (provisional recrediting) by ordering funds to be recredited to the consumer's account at the account-holding institution and, when complying with § 205.11(c)(1)(ii)(C), shall disclose the date the recrediting was initiated.

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§ 205.9 Documentation of transfers.

(a) *Receipts at electronic terminals.* At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the financial institution shall make available [1] to the consumer a written receipt of the transfer which clearly sets forth the following information, as applicable:

(1) The amount of the transfer.

(2) The date the transfer was initiated.

(3) The type of transfer and the type of the consumer's account(s) from or to which funds are transferred, such as "withdrawal from checking," "transfer from savings to checking," or "payment from savings." A code may be used only if it is explained elsewhere on the receipt.

(4) The number or other identification of the access device used to initiate the transfer.

(5) The identification, such as a terminal number, or location (in a form prescribed by paragraph (b)(1)(iv) of this section) of the terminal at which the transfer was initiated.

(6) The name of any third party from or to whom funds are transferred, unless the name is provided by the consumer in a form that the electronic terminal cannot duplicate on the receipt. A code may be used only if it is explained elsewhere on the receipt.

(b) *Periodic statements.* For each account from or to which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred. The information required by paragraph (b)(1) of this section may be provided on accompanying documents. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle,

(i) The amount of the transfer.

(ii)(A) For each transfer initiated by a consumer at an electronic terminal, the date the transfer was initiated and the date the transfer was debited or credited to the account, if different; or

(B) For each preauthorized electronic fund transfer or transfer initiated by telephone, the date the transfer was debited or credited to the account.

(iii) The type of transfer and the type of the consumer's account(s) from or to which funds were transferred. A code may be used only if it is explained elsewhere on or with the statement.

(iv) For each transfer initiated by a consumer at an electronic terminal, the location that appeared on the receipt or, if an identification (such as a terminal number) was used, that identification and one of the following descriptions of the terminal's location:

(A) The address, including number and street or intersection, city, and state or foreign country;

(B) A generally accepted name that refers to a specific location, such as a shopping center, airport, or railroad terminal, and the city, and state or foreign country; or

(C) The name of the entity, such as the financial institution [2] or seller of goods or services, at whose place of business the terminal is located, and the city, and state or foreign country.

[1] A financial institution may arrange to have a third party, such as a merchant, provide the receipt.

[2] A financial institution holding the consumer's account must describe the location of electronic terminals located at its place of business by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

(v) The name of any third party from or to whom funds are transferred.[3] If the transfer was initiated by a consumer at an electronic terminal, the statement shall include the name by which the third party was identified on the receipt, or the code, if one was used on the receipt, and the name of the third party.

(2) The number(s) of the consumer's account(s) for which the statement is issued.

(3) The total amount of any fees or charges, other than a finance charge under 12 CFR 226.7(b)(1)(iv), assessed against the account for electronic fund transfers or for the right to make such transfers during the statement period.

(4) The balance in the consumer's account at the beginning and at the close of the statement period.

(5) The address and telephone number to be used for inquiries or notice of errors preceded by "Direct Inquiries To:" or similar language. Alternatively, the address and telephone number may be provided on the notice of error resolution procedures set forth in § 205.8(b).

(6) If the financial institution uses the notice procedure set forth in § 205.10(a)(1)(iii), the telephone number the consumer may call to ascertain whether a preauthorized transfer to the consumer's account has occurred.

(c) *Documentation requirements for certain passbook accounts.* In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to a consumer's account, the financial institution may, in lieu of complying with paragraph (b) of this section, upon presentation of the consumer's passbook, provide the consumer with documentation by entering in the passbook or providing on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(d) *Periodic statements for certain non-passbook accounts.* If a consumer's account, other than a passbook account, may not be accessed by any electronic fund transfers other than preauthorized transfers to a consumer's account, the financial institution need only provide the periodic statement required by paragraph (b) of this section quarterly.

§ 205.10 Preauthorized transfers.

(a) *Preauthorized transfers to a consumer's account.* (1) Where a consumer's account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once evey 60 days, except where the payor provides positive notice to the consumer that the transfer has been initiated, the financial institution shall notify the consumer, by one of the following means:

(i) By transmitting oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred;

(ii) By transmitting oral or written notice to the consumer, within 2 business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) By furnishing a telephone number that the consumer may call to ascertain whether or not a transfer has occurred, provided that

(A) the financial institution informs the consumer, before the first preauthorized electronic fund transfer to the consumer's account, of the right to receive positive or negative notice under this section,

(B) the consumer elects to receive notice by means by telephone inquiries, and

(C) the financial institution discloses, at that time and on each periodic statement required by § 205.9(b), the telephone number to be used by the consumer for this purpose.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer no later than the business day on which the financial institution recieves the funds from the payor.

* * * * *

§ 205.11 Procedures for resolving errors.

(a) *Definition of error.* (1) For purposes of this section, the term "error" means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer from or to the consumer's account;

(iii) The omission from a periodic statement of an electronic fund transfer affecting the consumer's account that should have been included;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) Any transfer not identified in accordance with the requirements of § 205.9 or not recognized by the consumer as it is identified in any documentation required by §§ 205.9 and 205.10(a); or

(vii) A consumer's request for any documentation required by §§ 205.9 and 205.10(a) or additional information or clarification concerning an electronic fund transfer including any request for information, clarification, or copies of documents in order to assert an error within the meaning of paragraphs (a)(1) through (vi) of this section.

(2) For purposes of this section, the term "error" does not include a routine inquiry about the balance in the consumer's account or a request for copies of documentation or other information for tax or business purposes.

(b) *Notice* (1) A notice of an error is an oral or written notice from the consumer received by the financial institution no later than 60 days from transmittal of a periodic statement, or documentation under § 205.9(c), that first reflects the alleged error, or transmittal of additional information, clarification, or documentation as requested by the consumer under paragraph (a)(1)(vii) of this section. The notice must enable the financial institution to identify the consumer's name and account number and, except for errors asserted under paragraph (a)(1)(vii) of this section, must indicate the consumer's belief, and the reasons for that belief, that an error exists in the consumer's account, or that any documentation required by §§ 205.9 or 205.10(a) reflects an error, including the type, the date, and the amount of the error, to the extent possible.

(2) The financial institution may require that written confirmation be received within 10 business days of an oral notice of error if, when the oral notice is made, the consumer is advised of the requirement and the address to which the confirmation should be sent.

(c) *Investigation of errors.* (1) After the financial institution receives a notice of an error, the institution shall promptly investigate the alleged error, determine whether an error has occurred, and orally report or mail or deliver the results of the investigation and determination to the consumer.

(i) Within 10 business days after receipt of a notice of an error, or

(ii) Within 45 days after receipt of a notice of an error provided that:

(A) The financial institution, pending its investigation and determination of whether an error occurred, and within 10 business days after receiving notice of an error, provisionally recredits the consumer's account for the amount of the alleged error, including interest where applicable, but subject to the $50 liability provision of § 205.6(b) where an unauthorized electronic fund transfer may have occurred;

[3] A financial institution need not identify third parties whose names appear only on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

(B) The financial institution gives the consumer the full use of funds provisionally recredited, including honoring any items drawn on those funds by the consumer prior to the time that the consumer receives the notice under paragraph (f)(2) of this section or, whether or not received, prior to the expiration of the time ordinarily required for transmission of the notice, whichever is earlier; and

(C) The financial institution, promptly but no later than 2 business days after the recrediting, orally reports or mails or delivers notice to the consumer of the amount and the date of the recrediting and of the fact that the consumer will have use of the funds pending the financial institution's determination of whether any error occurred.

(2) A financial institution that requires but does not timely receive written confirmation of an error need not provisionally recredit the consumer's account, but must comply with all other applicable requirements of this section, promptly but no later than 45 days after receipt of the oral notice of an error.

(d) *Special rules for investigation.* (1) The financial institution may finally correct the consumer's account in the amount or manner alleged by the consumer to be in error without investigation, but must comply with all other applicable requirements of this section.

(2) With regard to alleged errors concerning transfers to or from a third party with whom the financial institution does not have an agreement, a financial institution's review of its own records regarding the alleged error will satisfy the financial institution's investigation responsibilities under paragraph (c) of this section.

(3) A financial institution, in investigating an alleged error, may rely upon information supplied by third parties without the financial institution conducting its own independent investigation to verify the accuracy of such information.

(e) *Procedures where financial institution determines that an error occurred.* If the financial institution determines that an error occurred, it shall

(1) Promptly, but in no event more than 1 business day after determining that an error occurred, correct the error (subject to the liability provisions of §§ 205.6 (a) and (b)), including the crediting of interest where applicable, and the refunding of any fees or charges imposed as a result of the error, and

(2) Promptly, but in no event later than the 10-business-day or 45-day time limits, orally report or mail or deliver to the consumer notice of the correction or, if applicable, notice that a provisional credit has been made final. This requirement may be satisfied by a notice on a periodic statement that is mailed or delivered within the 10-business-day or 45-day time limits and that clearly identifies the correction to the consumer's account.

(f) *Procedures where financial institution determines that no error occurred.* If the financial institution determines that no error occurred or that the error occurred in a manner or amount differing from that described by the consumer, it shall

(1) Deliver or mail to the consumer within 3 business days after concluding its investigation, but in no event later than the 10-business-day or 45-day time limits, a written explanation of its findings, which must include notice of the consumer's right to request the documents upon which the institution relied in reaching its conclusion;

(2) If the consumer's account has been provisionally recredited, orally report or mail or deliver to the consumer, upon debiting a provisionally recredited amount, notice of the date and amount of any such debiting and of the fact that the financial institution will honor any items that have been drawn on the provisionally recredited funds prior to the time that the consumer received the notice or prior to the expiration of the time ordinarily required for transmission of the notice, whichever is earlier; and

(3) Upon the consumer's request, promptly mail or deliver to the consumer copies of the documents, if possible, or a report containing the data upon which the financial institution relied in reaching its conclusion.

(g) *Withdrawal of a notice of an error.* The financial institution need not comply with the requirements of paragraphs (c), (d), (e), and (f) of this section if the consumer discovers that no error occurred and voluntarily withdraws the notice of the error.

(h) *Reassertion of an error.* A financial institution need not comply again with the requirements of this section if the consumer reasserts an error previously alleged regardless of the manner in which it is subsequently reasserted.

(i) *Relation to Truth in Lending.* Where an electronic fund transfer also involves an extension of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the financial institution must comply with the requirements of this section rather than with those of 12 CFR 226.2(j), 226.2(cc), and 226.14(a) governing error resolution.

Appendix A—Model Disclosure Clauses

* * * * *

Section A(8)—Disclosure of Right to Receive Documentation of Transfers (§§ 205.5(b)(2), 205.7(a)(6))

* * * * *

(b) *Preauthorized credits.* If you have arranged to have direct deposits made to your account.

(we will let you know if the deposit is (not) made as scheduled.)

(the person or company making the payment will tell you every time they send us the money.)

* * * * *

By order of the Board of Governors, October 5, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-31770 Filed 10-12-79; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

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53438 9-13-79 / Criteria for classification of solid waste disposal facilities and practices

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Health Care Financing Administration—

41636 7-17-79 / Medicaid providers; disclosure of information and access to records; requirements and conditions for participation

INTERSTATE COMMERCE COMMISSION

53513 9-14-79 / Property broker entry control

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55002 9-24-79 / Federal prisoners; advance of presumptive release date upon finding of "superior program achievement"

LABOR DEPARTMENT

Occupational Safety and Health Administration—

41427 7-17-79 / Standards; occupational exposure to chlorine; lifting of administrative stay

List of Public Laws

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This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 3920 / Pub. L. 96-84 To amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, and for other purposes. (Oct. 10, 1979; 93 Stat. 653) Price $.75.

S. 233 / Pub. L. 96-85 To amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes. (Oct. 10, 1979; 93 Stat. 655) Price $.75